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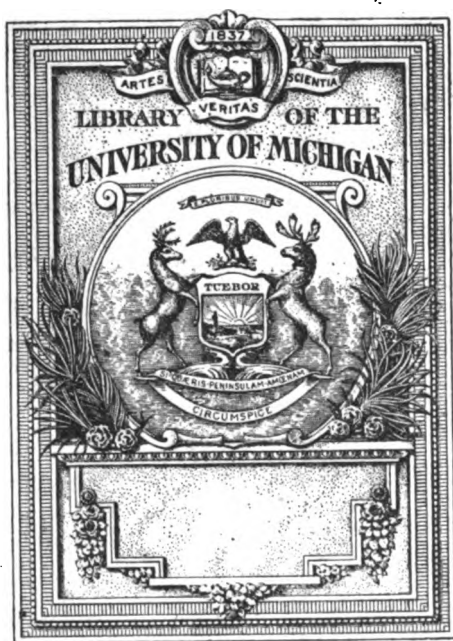
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**PROCEEDINGS OF THE NATIONAL
TAX ASSOCIATION**

PROCEEDINGS

OF THE

ELEVENTH ANNUAL CONFERENCE

UNDER THE AUSPICES OF THE



National Tax Association

**HELD AT ATLANTA, GEORGIA
NOVEMBER 13-16, 1917**

**NEW HAVEN, CONN.
NATIONAL TAX ASSOCIATION
1918**

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INTRODUCTION

In the introduction to the proceedings of the Indianapolis conference of 1916 the secretary went to some length in reviewing the history and achievements of the National Tax Association during its life of ten years. It was a record of achievement of which every member of the association may well be proud. The National Tax Association found itself in a recognized position of honor and authority in the nation and the world.

With the eleventh conference the National Tax Association starts upon the second decade of its history. It is no longer necessary to refer to past accomplishments in order to show that the association has made a permanent place for itself. That stage has passed. Our position is established and recognized. The problem now is how to give the maximum of service in the great problems of taxation that face the citizen, the states, and the nation. Our eyes are set toward the future rather than the past.

This idea of usefulness and patriotic service was undoubtedly the keynote of the Atlanta conference. This conference was generally admitted to be the best one in the history of the National Tax Association. In point of attendance and of interest it excelled all previous meetings. The presence of the war was keenly felt and patriotism was in the air. It was clearly the wish of all that the association might serve the nation loyally and effectively, both during the war crisis and in the weighty problems that will appear after the close of the war.

No further introduction to this volume is needed. The papers and discussions herein presented may confidently be left to speak for themselves.

FRED ROGERS FAIRCHILD,
Secretary.

FIRST SESSION

TUESDAY MORNING, NOVEMBER 13, 1917

ORGANIZATION OF CONFERENCE

1. CALL TO ORDER

Permanent Chairman,
William Bailey, Member State Board of Equaliza-
tion, Salt Lake City, Utah

2. ADDRESSES OF WELCOME

Hugh M. Dorsey, Governor of Georgia
Asa G. Candler, Mayor of Atlanta, Georgia

3. ADOPTION OF RULES

4. DISCUSSION OF GEORGIA TAX PROBLEMS

Edgar H. Johnson, Professor of Political Economy,
Emory College, Oxford, Georgia

5. STATE LICENSE TAXES, WITH ESPECIAL REFERENCE TO
GEORGIA

Edgar H. Johnson, Professor of Political Economy,
Emory College, Oxford, Georgia

6. GEORGIA PROBLEMS

John C. Hart, State Tax Commissioner, Atlanta, Georgia
(1)

OPENING OF CONFERENCE

PRESIDENT SAMUEL T. HOWE: It is one of the duties of the president of the National Tax Association to call the annual tax conference to order, which I now do. We have met for the eleventh annual meeting in this enterprising city of the fair south.

In line with precedent heretofore, the executive committee has selected a permanent chairman for the conference and I now take great pleasure in introducing to you Mr. William Bailey, member of the state board of equalization of the state of Utah, as your permanent chairman.

WILLIAM BAILEY, Permanent Chairman, Presiding.

CHAIRMAN BAILEY: Gentlemen of the Convention, I thank you very kindly for the honor that is bestowed upon me at this time. There are assembled here some of the greatest authorities on the principles of taxation that there are in the United States and there is a great problem that will have to be solved at this time, that of financing the war. I hope that the sentiment that shall go forth in this assembly will be in support of the authorities at Washington and that there will be nothing said or even hinted at that will in any way hinder what they are doing at Washington.

I am proud that I had the privilege of casting my vote as a member of the executive board of this organization to bring this conference to this city—the fair Dixie land. This is my first visit and I am very favorably impressed with the country. I take great pleasure in introducing at this time our first speaker, His Excellency, Hugh M. Dorsey, the governor of Georgia.

HONORABLE HUGH M. DORSEY: The people of Georgia are delighted at the opportunity to act as host to this association and to meet the distinguished guests from far and near accredited to this your eleventh convention.

We appreciate the disinterested, the altruistic nature of your work, and extend congratulations that by the sheer merit of those reforms which your body has originated and endorsed beneficial changes have been introduced into the tax systems of many of these United States, and there are due you thanks that among this number is found our own. For Georgia is undeniably debtor to your association for the most advanced step in its tax methods taken within the decade of your existence, and we anticipate that at no distant date the general assembly of our state will increase this obligation, which is now acknowledged, by the appropriation of other of your ideas.

We believe that your meeting here will contribute to an awakening of our people to the ever-increasing importance and necessity of the adoption of scientific principles in raising revenues for the support of our government. But there are other reasons why we are glad to have you.

We have a great commonwealth, of which we are proud—salubrious climate, fertile soil, great natural resources—and evidence on every hand of the skill, the pluck, the energy, and the genius of man, as evidenced by this capital city, which, though razed to the ground in our fratricidal strife, rose phoenix-like from its ashes. Our soil has always sustained a great people. The Cherokee, the Creek, and the Coweta Indians, who made their happy hunting ground between the Chattahoochee and the Savannah, were great of their kind. In '76 the Georgians were patriotic. In '65 they were heroic and true. In the Spanish-American War, under the volunteer system, we had the honor of furnishing a larger percentage of soldiers than any other state in the American Union, and today will be found in the breasts of our people as true Americanism as there is within the limits of our common country.

We are pleased to have you with us, and as our honored guests you are welcome to the best of everything we have.

CHAIRMAN BAILEY: At this time we are also to be favored with a speech from the Honorable Asa G. Candler, mayor of Atlanta.

HONORABLE ASA G. CANDLER: The name by which this meeting is known differs from that of most assemblies to which I have had the honor of speaking words of welcome to our city during the current year. I note you call it a conference. Conferences are being held everywhere in these days of war and disaster, which face every patriotic man outside and inside the great country in the very heart of which this morning we have the pleasure of meeting you.

It is a serious and sad moment when the family physician comes out of the sick room and says, "I wish a conference with others in order that I may see if anything can be done for the patient who now engages your mind and mine." It is then the family considers with great earnestness who is the mightiest man available in the medical profession, that he may be called into conference with the faithful and capable family physician, praying that the results of such conference may turn away the hand of death. And this morning, gentlemen, we meet under almost as serious environment. Notwithstanding this condition, we indulge the hope that the joy of having a duty well done may abide with you from this morning's opening to the closing hour of this annual conference of the National Tax Association.

You are meeting in a city that a little more than a half century ago arose phoenix-like from the ashes of fires set going by results of a war of American brothers. Here you find a community of more than 200,000 people, as patriotic American citizens as can be found on the globe; a people wholly American composing the capital city of the empire state of the South. In deference to you I say "of the South"; I might without exaggeration say "of America". Our regret is that such great conferences as yours have to adjourn and leave us all too soon. We would prefer that you abide long enough to find out what we are and who we are. We welcome the opportunity to show you that we have in Atlanta and in Georgia much to interest you as our guests and to enjoy as citizens of a great country.

My first introduction in coming to this room today was to a delegate from Maine who had visited our state capitol and seen there a geological display of Georgia's mineral deposits.

He was as much surprised as were some gentlemen in New York City when I informed them that my ambition was to have erected in the city of New York an office building to be constructed largely from Georgia marble. They had never heard of any such deposits in Georgia. Such deposits they thought were confined principally to the mountains of Vermont and New Hampshire. Those gentlemen, like my friend from Maine, had confined their knowledge of America too much to Manhattan Island and the regions round about. I was quite able to agree with them that "fools build houses", but had to differ as to the proper material to be used in the construction of an office building on Manhattan Island, whose substructure they and we all know is one solid block of granite. They had an idea that Georgia was so far removed from New York City that if we could find material down here it would cost more to transport it from the south to that far eastern shore than it would be worth when it was delivered there.

The truth is, gentlemen, conventions like this teach us that we are not far apart even though some of us come from Utah, Maine, South Carolina, Florida, or California. Georgia is a greater state than many of you know. It is gratifying to realize that we are learning about each other so rapidly in these days of transportation of mind and matter. Not many years ago a month of time was necessary for Georgia Democrats to hear authentically what had been the result of a presidential election in Oregon, and more time then was required for Georgia to get the returns from Florida than today is necessary for us to read a peace proclamation from the German Kaiser. So, gentlemen, in welcoming you I greet my neighbors, welcome because we and you are equally interested in the same great problems that confront every portion of this western world.

We indulge the hope that you will not find scanty and crowded conditions in the hotels so serious that it will be necessary to house you in garages or other less comfortable shelters. We do not wish it to be said of you as was said to the people who went up to Rome by order of Augustus Caesar to be taxed—the hotels so crowded that the principal family

who went up had to find lodging amidst the straw of the cow barns. We wish you to have pleasant accommodations and, if you will honor us, please remember that the latch string of our homes hangs on the outside and to the inside you are not only welcome but your abiding there will be esteemed an honor by the people of this city.

While tax gatherers have never been popular with the people, when we understand that your business is not the gathering but the distribution of taxes and their honest appropriation to the universal good, you will be recognized as the wise men, not only from the East but from whithersoever you come, and receive the homage to which your splendid efforts entitle you. If in some way the people from whom taxes are gathered could be made to believe that the distribution is wisely and honestly administered, tax men would cease to be looked upon as unwelcome guests and be received with acclaim. If, in other words, by some means the people could be induced to repose confidence in the administrators of the affairs of their government as implicitly as one brother to another, the silver lining of the political horizon would inevitably appear. It is here I daresay, as in other sections of the country, no objection to levying taxes; just that they should be as nearly as possible equitably assessed and wisely used.

These are the thoughts of some folks who have been able to take their minds off the troubled conditions across the seas while you gentlemen of the National Tax Association are holding this conference in Atlanta. They recognize that in Atlanta today is assembled in conference men high up, not only in authority but men of unimpeachable character, representative men from every section of our country, men who are giving their time and thought to the adjustment of affairs which concern every citizen, whether he returns poll tax or an estate of a multimillionaire.

If, by means of this conference, some such results as are hinted at above can come, the people not only of Atlanta but of the republic, in every walk of life, will feel about you as I do now, looking into the faces of great and patriotic citizens that are meeting in the capital of our state. Gentlemen, even if you do not reach the high goal to which I have undertaken

to call you, the people of Atlanta most cordially authorize me to bid you thrice welcome and to wish that your stay with us may be as pleasant as is possible under the adverse national conditions that confront you, and as long as the important private interests, which we are sure you have left at your several places of abode to come together to discharge the high duties which you have voluntarily imposed upon yourselves, will permit.

SECRETARY FRED R. FAIRCHILD: Before we proceed further with business I wish to move in behalf of the executive committee the adoption of the following rules of procedure. These are the rules which have governed our conferences in the past.

PROGRAM AND RULES

That the program as printed and distributed be adopted and followed with such modifications as may be required by reason of absence, vacancies, or other causes.

The usual rules of parliamentary procedure shall control.

Each speaker shall be strictly limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of a speaker may be extended by unanimous consent of those present.

In general discussion each speaker shall be limited to five minutes and no person shall speak more than once during the same period of discussion until others desiring to speak have been heard.

VOTING POWER

The voting power of the conference upon any question involving an official expression of opinion shall be vested in delegates in attendance appointed by governors of states, by universities and colleges or institutions for higher education, and by state associations of certified public accountants.

No person shall have more than one vote by reason of his appointment as a delegate from more than one source.

The voting power shall be by ayes and nays, unless a roll call be demanded.

On all other questions the voting shall be by vote of all in attendance.

The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing its opinion on the subjects treated.

COMMITTEES

(a) A committee of three on credentials, to be appointed by the chairman, who shall designate the chairman of such committee.

(b) A committee on resolutions, composed of one delegate from each state, selected from among the delegates appointed by governors; but in case of the non-attendance of any such, any person from such state may be appointed.

The chairman shall designate the chairman of this committee, such person to arrange for its organization.

All resolutions involving an expression of opinion of the conference on the subject of taxation shall be read to the conference before submission to the committee, and shall be immediately referred without debate.

I move the adoption of these rules of procedure.

[The motion being seconded, the above rules were adopted.]

SECRETARY FRED R. FAIRCHILD: May I call the attention of the delegates to another, unwritten rule which is perhaps of greater importance than those you have adopted. It has been the rule in the past that no expression of opinion of this conference shall be adopted unless it has practically the unanimous approval of the delegates. That has always been our custom and is one of the causes, I believe, that have given weight to our resolutions.

MR. EDGAR H. JOHNSON, of Georgia: Before reading my paper on state license taxes I should like to make some remarks on certain problems of taxation in Georgia.

The chief problem, at least the most pressing one as I see it, is that of administration. We ought, for one thing, to pay our tax commissioner as high a salary as that received by our supreme court judges. It would probably be better to have a tax commission of three members rather than a single tax commissioner. In this state we still follow the old crude method of arbitration when any difference as to valuation of property arises between tax officials and the man or corporation taxed. I am not especially hopeful concerning the results that can be obtained with locally elected assessors. We need something more than education and kindly suggestion, we need more power lodged with our central administration. Though it is not likely that our state is yet ready for this move, we should begin to think about it. Assessors locally elected must be subject to some real outside authority before they will insist on having property assessed at a proper value.

This morning I rode on the train with the tax collector of my home county. He told me that on the last public sale day several hundred acres of land were sold at an average of \$67.50 per acre. The land was given in for taxation at the rate of \$10 per acre. We should be hearing more about it if this had been true of a corporation. If the landowners are not the worst slackers in the matter of taxation they are among the worst. There is no property I own on which, in proportion to its value, a smaller rate of taxes is paid than on my little farm. It is assessed at a valuation put on it by the county tax officials. On the other property I place my own valuation and, following a resolution passed by the county tax equalizers in their annual session, I do not pretend to give in that property at but two-thirds its full value.

In Georgia we are still putting our main dependence on the general property tax. Most of our tax officials think that this furnishes the ideal tax if only it could be properly administered. You remember that during the Spanish-American War the national government levied an inheritance tax. This example was soon followed by a number of states. At this time the income tax is counted on by the national government for a large revenue, and some states will likely be led to adopt income taxes. There has been some talk among our legislators of such a tax, but until our methods of tax administration are more efficient we should probably not attempt it. Our inheritance tax rate could easily be increased and we should get from this source a larger revenue.

One suggestion I would make is that our legislators provide for a commission on taxation to study the whole subject. The report of the commission should be published and widely distributed. If a legislative committee were appointed to report on the subject of taxation it would result in a better education of our law-makers. The study and discussion of the published report would extend the process of education among the people. It is quite likely that the legislature would not at first pay much attention to the reports of such a committee, but it would be worth while to help on the discussion of needed reforms.

NATIONAL TAX ASSOCIATION

STATE LICENSE TAXES, WITH ESPECIAL REFERENCE TO THE LICENSE TAXES OF GEORGIA

EDGAR H. JOHNSON

Professor of Political Economy, Emory College, Oxford, Georgia

The "Financial Statistics of States, 1916," prepared by the Bureau of the Census, gives the following statistics: ¹

Geographic division and state	Total receipts from taxes	Receipts from taxes		
		On liquor traffic	Other business taxes collected with issue of license	Nonbusiness license taxes
Grand total . .	\$363,968,553	\$19,262,893	\$8,662,864	\$19,365,499
New England . .	41,166,417	1,104,300	280,348	2,929,104
Maine	6,806,339	. .	6,927	295,557
New Hampshire	1,865,030	. .	21,210	288,918
Vermont	2,428,598	82,539	55,857	313,156
Massachusetts	21,193,946	865,955	154,705	1,265,217
Rhode Island	2,739,707	155,806	20,611	217,046
Connecticut	6,132,802	. .	21,088	549,210
Middle Atlantic . .	87,547,127	10,810,411	1,801,994	4,782,019
New York	38,787,556	9,088,677	70,811	2,055,089
New Jersey	18,321,855	. .	477,466	789,526
Pennsylvania	30,437,716	1,721,734	753,717	1,937,404
East North Central . .	72,018,722	2,535,904	942,168	4,836,379
Ohio	15,444,028	2,501,779	173,817	1,310,624
Indiana	10,086,166	11,000	121,451	641,890
Illinois	16,099,996	. .	453,689	936,347
Michigan	18,398,042	23,125	41,818	1,491,264
Wisconsin	11,990,490	. .	151,388	456,254
West North Central . .	40,362,266	1,562,378	572,825	2,731,822
Minnesota	14,175,843	44,479	64,616	216,052
Iowa	7,427,189	. .	141,829	1,822,131
Missouri	6,646,068	1,317,899	141,195	379,687
North Dakota	1,908,981	. .	53,687	109,907
South Dakota	1,520,075	. .	40,129	60,566
Nebraska	4,322,834	. .	65,507	49,958
Kansas	4,361,276	. .	65,862	93,521

¹ Pp. 72-73.

STATE LICENSE TAXES

11

Geographic division and state	Total receipts from taxes	Receipts from taxes		
		On liquor traffic	Other business taxes collected with issue of license	Nonbusi- ness license taxes
South Atlantic . .	\$80,835,669	\$1,047,668	\$2,730,848	\$967,856
Delaware	646,352	74,203	91,365	61,930
Maryland	6,098,562	439,447	594,349	340,428
Virginia	7,335,990	413,996	788,688	168,387
West Virginia . .	3,696,134	. .	231,755	185,440
North Carolina .	3,020,428	. .	244,028	52,353
South Carolina .	2,277,449	. .	16,135	5,820
Georgia	5,415,653	. .	465,665	143,313
Florida	2,345,101	120,022	298,963	15,185
East South Central	19,554,185	395,960	1,362,401	500,002
Kentucky	7,706,850	357,498	155,924	321,935
Tennessee	3,837,495	. .	389,835	47,746
Alabama	5,048,637	38,462	316,265	121,323
Mississippi . . .	3,431,203	. .	500,877	8,998
West South Central	27,093,706	1,357,040	871,002	172,810
Arkansas	3,433,837	31,039	26,352	61,131
Louisiana	5,719,025	449,095	617,148	29,482
Oklahoma	4,402,905	. .	87,763	74,450
Texas	13,537,939	876,906	139,739	7,747
Mountain	12,733,759	515,091	173,875	524,575
Montana	2,051,100	381,656	58,387	104,694
Idaho	1,283,577	10,593	31,400	95,124
Wyoming	654,540	2,250	3,473	27,063
Colorado	2,696,490	33,068	37,481	109,599
New Mexico . . .	1,079,274	800	8,465	41,852
Arizona	2,395,444	. .	18,005	75,585
Utah	1,584,922	. .	6,285	70,658
Nevada	988,412	81,724	15,379	. .
Pacific	32,656,702	134,141	427,408	1,930,932
Washington . . .	9,478,657	134,141	246,194	249,836
Oregon	3,692,144	. .	94,801	203,775
California	19,485,901	. .	86,403	1,467,321

Similar statistics for 1903 are as follows: ¹

Geographic division and state	Total tax receipts	Receipts from taxes		
		Liquor licenses and other imports	Other business licenses	Nonbusi- ness license taxes
Total	\$189,165,067	\$9,749,588	\$8,606,867	\$204,865
New England . .	22,098,644	935,615	135,870	32,837
Maine	2,029,053	. .	3,250	32,337
New Hampshire .	748,456	. .	4,250	. .
Vermont	1,186,284	44,366	24,613	. .
Massachusetts . .	13,391,384	844,403	80,351	. .
Rhode Island . .	1,509,567	46,846	9,272	. .
Connecticut . . .	3,233,900	. .	13,882	. .
Middle Atlantic .	48,626,125	5,667,292	1,218,564	1,944
New York	23,258,959	4,221,672	. .	. .
New Jersey . . .	5,769,680	. .	3,390	. .
Pennsylvania . .	19,597,486	1,455,620	1,215,174	1,944
East North Central	33,886,422	1,146,343	2,332,057	91,143
Ohio	9,378,750	1,146,343	15,780	. .
Indiana	5,499,269	. .	. .	. .
Illinois	6,398,844	. .	. .	4,462
Michigan	6,876,680	. .	4,232	6,955
Wisconsin	5,732,879	. .	2,312,045	79,726
West North Central	21,486,674	378,499	69,846	5,722
Minnesota	6,220,083	. .	1,621	2,687
Iowa	3,026,494	. .	2,911	. .
Missouri	5,239,682	378,499	62,490	. .
North Dakota . .	911,672	. .	2,660	. .
South Dakota . .	1,273,323	. .	. .	. .
Nebraska	2,028,621	. .	164	3,035
Kansas	2,786,844	. .	. .	. .
South Atlantic . .	19,756,297	791,037	1,749,005	67,460
Delaware	415,187	47,172	108,205	. .
Maryland	2,852,986	159,232	350,718	. .
District of Col .	. .	. .	. .	. .
Virginia	3,960,752	293,317	522,363	. .
West Virginia . .	1,785,048	. .	578,036	. .
North Carolina . .	1,700,551	6,432	81,024	. .
South Carolina . .	3,533,434	. .	12,150	. .
Georgia	3,716,443	149,834	. .	67,460
Florida	1,791,896	135,050	96,509	. .

¹ See "National and state revenues and expenditures, 1903 and 1913," pp. 30, 31.

Geographic division and state	Total tax receipts	Receipts from taxes		
		Liquor licenses and other imports	Other business licenses	Nonbusi- ness license taxes
East South Central	\$12,304,030	\$499,908	\$1,091,834	..
Kentucky . . .	4,816,593	333,275	119,098	..
Tennessee . . .	2,632,336	..	462,596	..
Alabama . . .	2,882,199	166,633	108,113	..
Mississippi . .	1,972,852	..	402,027	..
West South Central	13,495,972	113,333	1,677,199	..
Arkansas . . .	1,436,417	113,333	324	..
Louisiana . . .	3,565,975	..	616,635	..
Oklahoma . . .	741,842	..	1,834	..
Texas	7,751,738	..	1,058,406	..
Mountain	6,199,689	170,134	193,782	6,257
Montana	1,165,049	56,848	129,177	..
Idaho	456,773	60,591	13,302	..
Wyoming	414,989	20	..	6,257
Colorado	1,624,073	52,675	29,007	..
New Mexico . . .	538,473	..	725	..
Arizona	564,486	..	7,020	..
Utah	1,036,096	..	..	..
Nevada	399,750	..	14,451	..
Pacific	11,311,213	37,422	138,710	..
Washington . . .	2,399,982	37,422	121,538	..
Oregon	1,222,567	..	11,809	..
California	7,688,675	..	5,363	..

The taxes on the liquor traffic are given above because they are usually license taxes. The license taxes, here considered to include all revenue from the liquor traffic, amounted in 1916 to \$47,291,256, or 13 per cent of total receipts from taxes.

In 1903 the license taxes amounted to \$18,561,313, or 9.8 per cent of the total tax receipts for that year. It is interesting to note that, in the face of a decided increase in total taxes (from 18.9 millions in 1903 to 364 millions in 1916), the license taxes should have made such an increase in their proportionate contribution to the expenses of the government. It is particularly interesting to see that despite the spread of pro-

hibition in recent years the taxes on the liquor traffic should have yielded in 1916 almost twice the amount yielded in 1903: in 1916, 19.3 millions; in 1903, 9.7 millions. In 1903, 28 states were reported as receiving no state revenue from taxes on liquor, while in 1916 only 22 states received no such revenues. Three of the states which in 1903 had no revenue from this source received in 1916 considerable taxes from the liquor traffic: Virginia, \$414,000; Louisiana, \$449,000; Texas, \$877,000. The states which in 1916 received more than a million dollars from liquor taxes were: New York, \$9,088,677; New Jersey, \$1,721,734; Ohio, \$2,501,779; Missouri, \$1,317,899. The states which received the largest per capita revenue from this source were: New York, \$0.90; Montana, \$0.86; Nevada, \$0.79; Ohio, \$0.49.

Nonbusiness licenses include general licenses and permits. Examples of general licenses are those required from persons keeping dogs or owning automobiles. An example of permit is the marriage license. The revenue from nonbusiness licenses in 1903 was only \$204,863. In 1916 these licenses yielded \$19,365,499. Of this amount, \$2,669,474 came from hunting and fishing licenses and \$16,505,774 came from the license tax on motor vehicles.¹ Each of the following states secured from the tax on motor vehicles amounts exceeding \$1,000,000: Massachusetts, \$1,201,968; New York, \$1,856,880; Pennsylvania, \$1,683,568; Ohio, \$1,154,154; Michigan, \$1,325,892; Iowa, \$1,726,290; California, \$1,205,410.

The business tax collected with issue of license is usually considered the most distinctive license tax. Those states in which such taxes exceeded \$0.16 per capita during 1916 were: Maryland, \$0.44; Delaware, \$0.43; Virginia, \$0.36; Florida, \$0.34; Louisiana, \$0.34; Mississippi, \$0.26; Georgia, New Jersey, Tennessee, Washington, and West Virginia, each \$0.17. With the exception of Delaware, New Jersey, and Washington, it will be observed that each of these states is in the southern section and the license tax is thought of as peculiarly southern. If, however, account be taken of the taxes on the liquor business and of the nonbusiness license taxes, which

¹ Financial statistics of states, 1916, p. 36.

together aggregated in 1916 more than four times as much as the business taxes collected with issues of license, this form of tax is not distinctly southern.

In some of the southern states the license laws are very extensive in the many kinds of business they reach. To cite some examples, the license laws of Florida cover 68 pages; those of Virginia, 64; those of Alabama, 45. The annual state license tax on physicians appears to be as follows: Alabama, \$5; Delaware, \$10; Georgia, \$10; Kansas, \$12; Louisiana, from \$5 to \$60, according to income; North Carolina, \$5; Texas, \$5; Virginia, \$10 or \$15, as determined by income. The tax on lawyers is as follows: Alabama, \$5; Delaware, \$10; Florida, \$10; Georgia, \$10; Louisiana, from \$5 to \$60, according to income; Mississippi, \$10; North Carolina, \$5; Virginia, \$15 to \$25, depending on income.¹ It will be noticed that these are all southern states.

In a study of license taxes it is difficult to decide what taxes should be classified under this head. Our census authorities declare that the lack of precision in the use of the words "license" and "fee" in the statutes of the various states makes the separation of the two sources of revenue impracticable. On the other hand, a license tax approaches an income tax when the amount of license is made dependent on income, as in Louisiana for example.

One of the early laws of Georgia, passed in 1783, was in effect a license tax on gentlemen of the leisure class, for it levied a tax of \$2.00 "on every male inhabitant of the age of twenty-one years who does not follow some lawful profession

¹ See "Taxation and revenue systems of state and local governments," published by the Bureau of the Census. This digest relates to taxation in force in 1912. A number of states exact a charge for the initial examination by the state board. This is a fee paid once for all and is not an annual license tax.

or mechanical trade and who does not cultivate or cause to be cultivated four acres of land".¹

If the present taxes on motor vehicles, varying according to horse-power, are license taxes, it would seem that the old taxes on carriages should be given the same classification. In 1785 Georgia levied a tax of 4s, 8d upon every two-wheeled carriage, and a tax of 9s, 4d upon every four-wheeled carriage. In the same year a tax of £1, 1s, 9d was levied on "every practitioner of law or physic" and also on "factors, brokers and vendue masters". This was also the tax levied upon a free negro.² The next year the tax on lawyers and physicians, factors, brokers, and vendue masters was raised to £3, 5s, 3d, which was three times the former tax. A tax of "40 shillings for every stud horse" was also levied.³ These taxes on practitioners of law and physic, on brokers, factors, and vendue masters, and also the carriage taxes are found from year to year with varying amounts. Lawyers and doctors, indeed, have not been exempt at any time since these early days from paying a license tax to the state. The law of 1790 stated that these taxes were payable in clean merchantable rice, in tobacco, notes, or in merchantable cotton.⁴ The law of 1791 lays on "professors of law and physic" a tax of 20 shillings.⁵ The license on taverns was fixed at £2 and on billiard tables at £5.⁶

Beginning with 1796 the taxes are levied in terms of dollars rather than pounds and shillings. The tax on lawyers and doctors was for that year fixed at \$4.00. Billiard tables were taxed at \$50.⁷ The law of the next year continued the tax of \$50 on billiard tables and added a tax of \$300 "on every E. O. table and other instrument of like construction for the purpose of gambling".⁸ In 1798 a tax of \$15 was levied on each negro imported from any part of the United States. This was not continued in later tax laws.⁹ The tax law of 1807 provided that "there shall be levied annually and collected upon all stallions or covering horses let to mares for hire a tax equal to the season or price of one horse let to such

¹ Marbury and Crawford's Digest of the laws of Georgia (1755-1800), p. 447.

² Ibid., p. 454.

³ Ibid., p. 486.

⁴ Ibid., p. 487.

⁵ Ibid., p. 492.

⁶ Ibid., p. 446.

⁷ Ibid., p. 506.

⁸ Ibid., p. 517.

⁹ Ibid., p. 526.

stallion or covering horse".¹ In the same act it was provided that five per cent of the proceeds of the sale of lottery tickets should go to the state. In 1820 the state demanded 25 per cent of the proceeds of the sale of lottery tickets.² The next year the sale of lottery tickets was prohibited "except as lotteries may be authorized by the state".

In 1831 a license tax of \$2,000, limited to one county, was levied on "peddlers who may carry about their wares and merchandise in wagons or other vehicles drawn by horses or mules or packed upon horses or mules". If these peddlers carried their wares on foot the tax was only \$1,000 per county. An exception was made of the manufacturers of tin, stone, leather, and iron wares when the articles were made within the state.³ By an act passed the following year the exceptions were extended to include "any article which may be actually manufactured within this state; or any books or maps or charts which may be made in this state or elsewhere".⁴ In 1835 an act was passed applying to four counties, which levied a tax of \$25 on an exhibition of horses, a tax of \$10 "for introducing and exhibiting animals, beasts or vermin, or any other of the like description", and a tax of \$15 for exhibiting in person, pictures, or fictitious figures".⁵ This law was extended two years later to the whole state.⁶

In 1850 there was a revision of the law taxing vehicles. The tax on a sulky or buggy was made 50 cents, on each rock-away, coach, or closed carriage, "one dollar; on each two-horse stage coach four dollars; on stage coaches drawn by more than two horses, six dollars; on each omnibus, ten dollars".⁷ In 1858 an annual tax of \$1,000 was levied on each manager of a lottery.

¹ Prince's Digest of the Laws of Georgia (to 1820), p. 500.

² Foster's Digest of the Laws of Georgia, p. 329.

³ Acts of general assembly of state of Georgia, 1831, p. 183.

⁴ Ibid., pp. 229-30.

⁵ Ibid., 1835, pp. 285-6.

⁶ Ibid., 1837, p. 257.

⁷ Ibid., 1849-50, p. 376.

The license laws of 1868 may be given as showing the extent of license taxes imposed soon after the Civil War. The taxes were as follows: lawyers, doctors, dentists, \$10; artists and photographers, \$15; auctioneers, \$25; pool and billiard and bagatelle tables, \$25 for each table; ten pin alley, \$20; any other table or game unless used for exercise and amusement only, \$10; sleight of hand performers, \$50; circus, \$100 per day; other shows, not including those of literary and charitable purposes nor theatre or operas, \$25 for each county.¹

From time to time license taxes have been laid on other kinds of business until now about 16 pages of the last general tax act, passed in 1909, are given to license taxes. Some of these taxes are as follows: on every practitioner of law, medicine, or dentistry, optician, veterinary surgeon, public accountant, civil, mechanical, and electrical engineer, \$10; on every artist, \$10 for each county in which he may operate; on every auctioneer, \$25 for each county in which he may operate; on every amusement park, \$200; on every bicycle dealer, \$10; on every keeper of pool, billiard, or bagatelle tables, \$50 for each table; on every dealer in cigarettes, cigarette paper, or cigarette tobacco, \$25; on every mercantile agency, \$100 for each county in which it may have an office; on every detective, \$10 for each county in which he may do or offer to do detective work; on every moving picture show, \$10 per month; on every emigrant agent, \$500 for each county in which he may conduct or offer to do business; on every lightning rod agent, \$50 for each county in which he may operate; on every manager of any ten pin or bowling alley, \$25 for each place of business; on every peddler of patent medicine, jewelry, soap, etc., \$50 for each county in which he may operate; "upon all persons, firms or corporations running or operating soda fountains in this state the sum of \$5.00 on each draught arm or similar device used in drawing carbonated water; upon every dealer in pistols, \$25; upon every pawnbroker, \$200; upon every circus company, taxes varying from \$1.00 to \$5.00 per day for each day of exhibition".

The amount raised from business taxes issued with license

¹ Acts of general assembly of Georgia, 1866, p. 163 ff.

for the fiscal year ending December 31, 1916, was \$465,665. The amount raised from nonbusiness license taxes was \$143,313. The revenue from some of these taxes was as follows: billiards and pool, \$31,317; cigarette dealers, \$40,662; electric shows, \$10,329; insurance agents, \$17,746; license fees, near beer, \$49,308; manufacturers of soft drinks, \$3,759; liquor package fees, \$11,633; occupation tax, \$114,103.

GEORGIA PROBLEMS

JOHN C. HART

State Tax Commissioner, Atlanta, Georgia

The subject assigned to me for discussion this morning is Georgia problems with reference to taxation. I will not attempt in this paper to deal with the subject of taxation generally, nor to discuss it as a science: neither am I sure that Georgia has any problems or difficulties not common to other states. The question of taxation is perhaps the most difficult of all the problems affecting government. It was no doubt the first great problem and will be the last. It is the life blood of the state. Government deprived of this function would perish.

THE EQUALIZATION TAX ACT

The general assembly of the state of Georgia passed an act, approved August 14, 1913, known as the equalization tax act. The purpose of the act may be briefly stated as two-fold: (1) the placing on the digest for the purpose of taxation all the property of the state not otherwise exempt; (2) the equalizing of the burden between those who pay taxes, according to the property owned. In other words, the act contemplates the enforcement of the constitutional requirement that "all property shall be taxed ad valorem, and collected under general laws".

This act created the office of state tax commissioner. It further provided for local boards of assessors, consisting of three members, in each county. These boards are to review the returns made to the county tax receiver and to equalize values between the citizens of the county. The board is also given the authority to hunt up and place on the digest omitted property. The law contemplates that they shall complete their duties within fifty days; and, finally, all the digests of the state are to be sent to the state tax commissioner, who is given authority to compare the digests and add or subtract a percentage on

property of like species in any given county or counties, so as to secure a uniform assessment and valuation between the counties of the state.

THE NECESSITY OF THE ACT

The passage of the act was made necessary not only because of the condition of the state treasury, but also from the standpoint of justice to those taxpayers who were in fact paying their proportionate share of taxes. To those familiar with the financial condition of the state and the prevailing injustices as a result of the lack of supervision of the assessment, no argument is necessary to justify its passage.

GENERAL PROPERTY TAX

For one hundred years there has existed in this state the general property tax: that is to say, the state levied a flat ad valorem tax upon all property subject to taxation. The taxpayer returned his property annually, or at least was supposed to; and, unless the tax receiver questioned the correctness of the return, which was rarely ever done (the office being elective), the return went unchallenged. As a result of this it was but natural that great inequalities existed in valuations. Under this system and the lack of supervision a great deal of property was never returned. The effect of these omissions and tax evasions was simply to shift the burden onto the shoulders of somebody else. The practice had grown to be a scandal, and like property was returned by various taxpayers from "no return" at all to 100 cents on the dollar. It can readily be seen that, under such state of facts, the system, or lack of system, penalized the man who acted fairly in his return and rewarded the man of elastic conscience. The present act has for its purpose a fair division of the burden of government between the citizens, according to the ability of each to pay, which ability is to be measured by the amount of property he owns. This seems to be the essence of justice, and is in accordance with the organic law of the state.

THE OPERATION OF THE ACT

On August 15, 1913, I was appointed state tax commissioner

by Governor Slaton. This appointment was unexpected and unsolicited, and accepted by me for the reason that I believed it afforded an opportunity to render the state a real, substantial service. I was fully aware of the magnitude of the undertaking, and the probable failure to inaugurate a just and fair system of taxation. I was fully conscious of the difficulties of its enforcement and of the natural prejudice which has existed at all times and everywhere in the matter of collection of taxes. I believed if the work was made effective it had to be accomplished through appeal to the reason of the taxpayers and to their sense of justice. In other words, the work I was about to undertake, if made a success, had to be largely educational, and this policy has been directed by efforts in the office. I have made many speeches in the state in explanation of the law and distributed thousands of circular letters, trying to make its purpose clear. That is, the people have been dealt with on the idea that they are all stockholders in the big corporation, the state, and are entitled to know just how and why their money is spent.

The average citizen of Georgia is willing to take his just proportion of the burden of taxes. To be sure, he is insistent that the other man shall take his burden also, and this is as it should be. Let the people understand the necessity of government, and be convinced that their affairs are conducted on the same sound business basis essential to and practiced by successful businesses generally, and the taxpayer becomes a supporter and an advocate of the law.

The total value of property for 1913 in Georgia was \$867,973,737, which has been increased, largely under the operation of the equalization tax act during the four years of its existence, to approximately \$991,000,000.

INCREASES LARGEST ON VISIBLE PROPERTY

The largest increase on any particular item of property has been on real estate. This has provoked some antagonism to the law, for Georgia is largely an agricultural state. The majority of the members of the general assembly are farmers and landowners, and some criticize the act as disproportionately raising land values. The facts, however, do not justify

this criticism. The increase of land values is largely because under the operation of the act new acreage has been discovered and put on the digest, approximately nearly 1,000,000 acres. There are several counties in Georgia which have discovered as much as 50,000 acres of land which have never before been on the digest nor paid a cent of taxes.

The mere raising of revenue, however, I esteem a less reason for congratulation than the existence at present of the healthy and wholesome spirit which has been developed in favor of giving the state in the matter of taxation a square deal. It is this patriotic sentiment and the desire to do the right thing, on the part of the people, which has made possible the gratifying results.

LOCAL BOARD OF ASSESSORS

The morning I accepted the office of state tax commissioner I made the statement that the success of the law ultimately rested upon its administration by the local boards of assessors. This law will become effective and valuable in proportion as it succeeds in placing upon the digest hidden and concealed property, and fairly equalizing the visible property between the taxpayers. The constitution and laws of this state tax all property. Nothing that the legislature could do in the passing of laws would make this proposition more emphatic. It is the administrative machinery that becomes all-important. The tax act will grow in importance or ultimately fail as the local boards of assessors become efficient or retrograde. This is the angle, in my opinion, from which the state must view its greatest problem. I unhesitatingly say, after four years of service, that the local boards of assessors constitute the hope, the life, and the strength of the law. There should be annual meetings of the several boards of county assessors of this state, called by the state tax commissioner, for the purpose of conference and co-operation, involving exchange and interchange of views; to the end that taxes may be laid justly and uniformly collected on all property of the state. I have repeatedly made this recommendation to the general assembly, but so far that body has failed to confer the authority suggested.

The work of equalizing values between taxpayers is a very

difficult and delicate undertaking. The question at issue is one of "opinion", and in tax matters, as in all others involving opinion, there will always exist differences. The assessment of property is an art, requiring skill, experience, judgment, and honesty. Men to do that business ought to be well paid and continued in office, and upon proof that they are deficient some supervisory authority should be authorized to remove them. I believe this suggestion applies with equal force to every other state in the Union. The whole ground work of every scheme of taxation is dependent upon a fair and honest primary assessment. If the assessment is wrong in the first instance the superstructure will likewise be wrong.

EQUALIZATION AMONG COUNTIES

Next in importance in the enforcement of the equalization tax act by the local boards of assessors, among the people of the county, is equalization among the counties of the state by the state tax commissioner. If the local boards of assessors properly discharged their duty the effect would automatically be county equalization. There would be no need of the exercise of the power conferred upon the state tax commissioner to add or subtract a percentage to equalize the same species of property in the different counties. The enforcement of the rule of ad valorem taxation in the counties would result in county equalization throughout the state. This is the only just rule of taxation, and where enforced produces universal equality between individuals and counties. Equality is, of course, the first essential, but it can never be accomplished so long as local boards adopt varying percentages of valuation. Where one man returns land at \$15 per acre and another returns his land at \$5.00 per acre, although in reality of identical value, the effect is the taxing of one man three times as much as the other, and is nothing more or less than the rank-est discrimination.

CHANGES AND EXPERIMENTS SHOULD BE CAUTIOUSLY MADE

By section 12 of the equalization tax act it is made the duty of the state tax commissioner to investigate all matters of taxation and recommend to the general assembly, through the

comptroller, from time to time such changes and alterations in the tax laws of the state as in his judgment he may deem best to bring about a more perfect, adequate, and thorough system of taxation. Theory is one thing and practice is quite another, and in matters of taxation especially often prove disappointing.

I find a few of the states have adopted a system of segregation of sources; several of them the classification of property. Again, some have adopted the policy of taxing once, as a record fee, mortgages and secured credits and exempting thereafter such securities from taxation. Georgia, as stated, operates under the flat ad valorem tax. My conclusion of the whole matter is that a tax system should be enacted with due regard to the character and conditions of the people and the property to be taxed. In other words, a tax system which might work well in a purely agricultural state would not be workable in a state purely commercial, and vice versa.

CONCLUSION

Altogether I think Georgia is making progress with her problem. I believe as the people grow to understand the law their appreciation and support of it will become more general. No patriotic man objects to contributing his share to the support of government. No just man wishes by tax evasion to shift his duty and obligation to his country upon the shoulders of his neighbor.

SECOND SESSION

TUESDAY AFTERNOON, NOVEMBER 13, 1917

CHAIRMAN—CHARLES V. GALLOWAY, OREGON

SOUTHERN STATES SESSION

1. TAX PROBLEMS IN LOUISIANA

**Thomas M. Milling, Member Board of State Affairs,
Baton Rouge, Louisiana**

2. THE TAX PROBLEM IN NORTH CAROLINA

**A. J. Maxwell, Secretary State Tax Commission, Ra-
leigh, North Carolina**

3. TAXATION IN OKLAHOMA

**Campbell Russell, Member Corporation Commission,
Oklahoma City, Oklahoma**

4. TAXATION IN TENNESSEE

W. A. Owens, LaFollette, Tennessee

(27)

TAX PROBLEMS IN LOUISIANA

THOMAS M. MILLING

Member Board of State Affairs, Baton Rouge, Louisiana

Before attempting any discussion of tax problems in Louisiana it is necessary to outline our system of taxation, and this outline must of necessity be a mere skeleton of the system. An amendment to the constitution of Louisiana was adopted in the year 1916, materially changing the method of assessing and collecting taxes. This outline will be of the system as it now is and not as it was.

Louisiana is divided into 64 parishes. What is called a county in all the other states is called a parish in Louisiana. The government of these parishes is similar, except in the parish of Orleans, which includes the city of New Orleans, the city limits being co-extensive with the limits of the parish.

In the 64 parishes outside the parish of Orleans an assessor is elected every four years. Each parish is divided into wards and every four years there is elected from each ward members of a body known as the parish police jury. The police jury is the local parish legislature, having the right to pass laws and to assess and collect taxes. The city of New Orleans, for assessment purposes, is divided into seven assessment districts. Assessments in these districts are conducted almost exactly as they are in the different parishes, except that the commission council of the city takes the place of the police jury.

Under Act 140 of 1916, carrying into effect the constitutional amendment before mentioned, the governor appoints a board of state affairs, composed of three members. The members of the present board were appointed for terms of two, four, and six years. We have, therefore, an assessor, a police jury, and a board of state affairs, all parts of the machinery for the assessment of property.

All the property in the state of Louisiana subject to assessment and belonging to the public service corporations, such

as railroad, telephone, telegraph, and express companies, is directly under the control of the board of state affairs. Such property is valued and assessed originally by the board. The parish assessors have no jurisdiction of any kind over the property of these corporations. All other property in the state of Louisiana is assessed originally by the local assessors. Under our law, the local assessor is required, in person, or by deputy, to visit each year each and every taxpayer in his parish and inspect the taxpayer's property.

The taxpayer is required, under the law, to fill out an assessment sheet giving a complete and correct description of his property, and to give its cash value, under oath. The failure of the taxpayer to fill out his assessment sheet and swear to it, subjects him to "the doom of the assessor" and bars him from any action in the courts for a correction of the assessment. If the taxpayer should fail to fill out his assessment sheet and swear to it, or should fail to correctly describe his property, or should undervalue it, then it is the duty of the assessor to make out another assessment sheet for that particular taxpayer, giving a full and complete description of his property and the correct valuation.

In Louisiana all real estate assessments must be made as of January 1, and the assessors are expected to begin their work on that day. Mercantile assessments and stocks of various kinds of goods are assessed on the average amount carried during the year; all other property is assessed at the time the assessor reaches it. The assessor is required by law to have an assessment sheet for every taxpayer in his parish. After he has completed his assessment he presents all the assessment sheets to the police jury of his parish, which is authorized to sit as a board of reviewers and review the assessment thus made. Any citizen who has properly filled out and sworn to his assessment sheet has the right to appear before the police jury and protest the assessment made by the assessor. The police jury, sitting as a board of reviewers, has the right to increase or decrease the value placed by the taxpayer or by the assessor, after giving due notice.

Under the present system, after the assessor makes the assessment and after the police jury passes upon it as a board

of reviewers, the assessor then makes from his assessment sheets an abstract of his assessment, which is forwarded to the board of state affairs. This abstract contains whatever information the board desires, and the assessor may be required by the board to send up every assessment sheet in his possession.

At this point the system becomes involved and difficult, for the reason that in Louisiana, under the present system, we have a segregation of values: that is, we may have one value for state assessment purposes and another for parish assessment purposes. In order to make this plain, it is necessary to explain that the board of state affairs in Louisiana deals only with state taxes. It has the right to fix the actual value of all property in the state for state assessment purposes. The state tax rate in Louisiana is five mills. There is also a state tax of one mill for the confederate veterans and another state tax of one-fourth of a mill for good roads. Thus, we have a tax rate of 6.25 mills, running all over the state of Louisiana.

For the purpose of the assessment and collection of these state taxes, the board of state affairs has the right to fix the actual cash value of all the property in Louisiana, and its final judgment on such values can only be overturned by the courts. The assessors of the various parishes send their abstracts to the board of state affairs, giving the values found by them on the various classes of property; and, if the board is of the opinion that the value on that class of property in that particular parish is not high enough, then it has the right to arbitrarily increase it. To illustrate: if an assessor should report that there were in his parish 1,000 horses, averaging \$50 in value per head, if the board of state affairs was of the opinion that horses in that particular parish should be valued at an average of \$75 per head, it would order the assessor to add 50 per cent to the value of every horse, in order to bring the general average up to \$75. This same method is pursued with respect to all other classes of property, and the board also has the right to fix the actual value, for state assessment purposes, of any particular piece of property.

After the board has determined the actual value of prop-

erty in the parish, its findings are returned to the assessor, who is required by law to keep his books open for twenty days so as to allow any taxpayer an opportunity to investigate and ascertain the value placed upon his property. After the twenty day period expires, the police jury meets and all taxpayers objecting to the values placed by the board must present their protest. The police jury either sustains or refuses the protest, and either party has the right of appeal to the board of state affairs. The board may either rescind its former action and fix a new value or sustain the value first fixed. Then the taxpayer's only recourse is to the courts. In the case of public service corporations, they must protest directly to the board, and if their protest is refused have recourse to the courts also.

After the board of state affairs has ascertained the actual value of all the property in the state, it determines how much revenue is necessary to support the state government, and fixes a percentage of actual cash value for assessment purposes necessary to raise the revenue. To illustrate: this year the actual cash value of the property in the state of Louisiana subject to assessment, as found by the board of state affairs, was \$1,400,000,000. The board determined from the appropriation bill that the revenue needed by the state from tax sources would be \$3,500,000 and, therefore, fixed 50 per cent of actual value for state assessment purposes. This will give an assessed valuation of \$700,000,000, and a five mill rate will give the required \$3,500,000.

To recapitulate, for the purpose of state taxes, the board of state affairs fixes the actual value on the property, as returned by the assessor, and then fixes the percentage necessary to give the revenue for state purposes.

The police juries of the various parishes have the right to accept or reject the actual values fixed by the board. After the parish authorities have fixed actual value, they also fix a rate per cent for local assessment purposes. Under the law the parishes cannot assess property for more than its actual cash value, nor for less than 25 per cent of the amount fixed by the board of state affairs as actual value for state purposes. The property of the public service corporations in each parish is valued by the board of state affairs, but must be

assessed for parish purposes at the same percentage of its actual value as other property in the parish.

We, therefore, have in the state of Louisiana today a valuation by the board of state affairs for state purposes and an assessment of 50 per cent of that actual cash value, on which all state taxes are levied. We have for purposes of local assessment values and percentages fixed by local police juries, and these percentages vary from 38 to 100 per cent of actual cash value.

This segregation of values was absolutely necessary in the state of Louisiana. Prior to 1906 the assessors of the state of Louisiana were appointed by the governor. Being under the control of the governor, the needs of the state government were fairly well cared for by the assessors, but in 1906 the assessors became elective by the people and their responsibility to any central authority ceased. While the appointment of these officials was in the hands of the governor, he could force them to return all the property and to value it fairly, but after 1906 this authority was lost and the assessors became responsible to no one save to the people electing them. It is true that Louisiana had a board of equalization, but the powers of this board were limited and no real supervision was exercised over the assessors.

From 1907 to 1916, under this system of elective assessors, according to the reports of the board of equalization, Louisiana lost \$11,000,000 in the assessed value of its land; \$3,000,000 in the assessed value of its live-stock; and over \$6,000,000 in the assessed value of its miscellaneous personal property. There was a tremendous gain in the assessed value of its saw mill plants, its oil lands, its sulphur lands, its lumber, and its public service corporations. The gain in assessed valuation should have been much larger. Our land assessment and the assessment of our live-stock and miscellaneous personal property should have increased. An examination of the returns for the years between 1907 and 1916 would convince any observer that the local assessors were steadily decreasing the values of home-owned property and increasing the values of the property of corporations and non-residents. During that time the law required property to be assessed at its actual

cash value, but this law was a dead letter on the statute books; values were never higher than 50 per cent of actual value, and in most instances were around 25 or 30 per cent.

The constitution of our state permits the creation of school, road, and drainage districts, and the levying of special taxes within the limits of these districts. It also permits the voting of special taxes in aid of public improvements, such as railroads, school houses, and improvements of that character. A veritable flood of these special taxes has swept over the state of Louisiana and has made the rate of taxation in the parishes so high that to assess on anything like actual cash value would amount to confiscation. I know of one instance, in a certain district in Louisiana, where the people pay 62 mills, and there is hardly a place in the state of Louisiana where the taxes amount to less than 30 mills. These special taxes having so greatly increased the rate, it was necessary for the assessors to place a low value on property in order to prevent the confiscation of the property of the people. A great many of these special taxes are a flat rate of so many mills on all the taxable property in a certain district, and in a great many instances if assessments were made on actual cash value, or anything like actual value, would raise a great deal more money than was originally contemplated.

The state government, which was attempting to reduce its rate of taxation, suffered tremendously from the reduction in values made by the local assessors, and it was found necessary to formulate some plan that would permit the state taxes to be assessed on one value and the local taxes to be assessed on another. Therefore, the board of state affairs was created, with the right to find actual value and to fix a percentage for state assessment, and the law was amended so as to permit any parish to fix its assessed value at any per cent not lower than 25 per cent of the actual value fixed by the board of state affairs, and not higher than actual cash value. For the purposes of state government this scheme presents numerous advantages. It enables the state to protect itself against the local assessors and virtually places the taxing authority in the hands of a board selected by the governor, whose first thought is state finances.

The systems of taxation in vogue in the United States have nearly always resulted in the gradual starvation of the state government. The people of each local sub-division have been so busy taking care of their own special and peculiar interests at home that they have given little thought to the needs of the central government; and consequently that government has suffered from want of funds. Under our present system in Louisiana, our state government need not suffer for funds for many years to come, as the board of state affairs has the right to determine the actual value of all the assessable property and then to fix a percentage for assessment that will raise the needed revenue. This board also has the authority to investigate the various public institutions spending the public money and to submit to the legislature a budget that will practically cover the entire appropriation bill. The legislature is not bound to accept the budget as presented by the board of state affairs, but must necessarily be largely influenced by the investigations and conclusions of the board. Our board will present this same budget to each succeeding legislature, and, as the board will be very much better prepared, by reason of its investigations, to say where and when and how the money should be spent, it seems almost inevitable that the board should in time become the controlling factor in the spending of the state's money.

The present system in Louisiana is a vast improvement over the system that existed before, yet it is fraught with many problems. First, we use the general property tax. Nearly all taxing authorities agree that this system is obsolete. We are afflicted with the system of elective assessors. The elective assessor system has been thoroughly discussed before this body, and I believe that the great majority of people who have investigated this question have been forced to the conclusion that the elective assessor system is an eternal bar to a just distribution of tax burdens. My year's experience in attempting to adjust the tax problems of Louisiana has convinced me that until we adopt another system of selecting assessors we will not approach anything like equality in taxation. I personally do not believe in placing the appointment of assessors in the hands of any man, or any body of

men. They should be selected under civil service rules, on account of their fitness, and then placed under the authority of the state tax commission. They would not then be hampered by political considerations and would be prepared to assess property from the standpoint of its value. I will not enlarge upon the faults of the general property tax or of the elective assessor system. The faults of these two systems have become *res adjudicata* among taxing authorities.

The first tax problem that confronts our board, aside from the general property tax and the elective assessor, is the problem of the taxpayer. My experience leads me to conclude that a large percentage of taxpayers are prone to avoid the payment of taxes. They are quick to demand a perfect government and slow to support it financially. Nearly all taxpayers claim that they want to pay taxes, but they want to be certain that everybody else is paying. They desire to know that every one is doing them justice before they do justice to the state. Personally I believe that the reluctance of the taxpayer to render all his property for assessment and to give it a fair value in our state is largely the result of the inequalities and injustices necessarily brought about by the general property tax and by the faults of the elective assessor system. Tax burdens, under the general property tax and with the elective assessor system, are not distributed equally or fairly, and nearly every taxpayer realizes this in some way or other. Feeling that the burden is not equally distributed, the average taxpayer seeks to avoid as much of it as he possibly can.

The first special problem that arises in Louisiana under the system presently in use is the question of expense. It is necessary for the board of state affairs to employ a large force of traveling inspectors to supervise the local assessors and see that they correctly value property, and this system must finally result in practically a double assessment. In order to protect the state, the board must exercise the closest supervision over the local assessors. This can only be done by the employment of traveling inspectors, and the expense of maintaining these inspectors is very great. The system will thus violate Adam Smith's fourth maxim that "Every tax ought to be so contrived as both to take out and

to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state." I believe that the people of Louisiana will find in time that it will be far better to select their assessors by some civil service examination and place them directly under the control of the board of state affairs rather than to elect local assessors and then appropriate money to enable the board of state affairs to supervise the assessors. If the board had the employment of the assessors originally, no supervision would be necessary and the extra cost would be eliminated. The rights of the people in each locality could be protected by the creation of a local board of review, with authority to pass upon values placed by these selective assessors.

The next problem that has developed under this system is the confusion necessarily arising from carrying four values on the assessment roll. Under our system we may have an actual value for state purposes and an actual value for local purposes, a percentage for state purposes and a different percentage for local purposes. In order to compute the taxes and to comply with the law, it is necessary to carry all these values on the assessment roll, which increases the work of the assessors tremendously and necessarily increases the expenses of their office. An assessment roll of this kind must be a large and cumbersome volume; and there is a great deal of dissatisfaction already among the assessors in our state on account of these troubles.

One of the most serious troubles arising from the system is going to develop from the undervaluation by the local taxing authorities of home-owned property and the overvaluation of the property of non-residents and non-voting corporations. It is evident to the board that the local taxing authorities are developing a strong tendency to undervalue local property and overvalue the property of non-residents. When the percentage is applied the property overvalued must necessarily be bearing an unjust proportion of the burden, and the only recourse is to the courts. All these cases must be tried in the parish where the property is located, and necessarily the non-resident property owner is placed at a disadvantage. The board of state affairs has no control over the local taxing

authorities in the matter of actual value for local purposes, and the aggrieved parties are forced to the long, tedious, and expensive relief of the courts.

Another trouble that has developed under this system is the levee tax question. There are a great many levee districts in Louisiana, levying a special tax of 10 mills for levee purposes. Nearly all these districts are composed of more than one parish and, as the attorney-general has ruled that levee taxes must be collected on the values fixed for local purposes, necessarily the parish that has a lower per cent of actual value will pay less for the maintenance of the levees. We already have an example of this in our state. Two parishes fronting on the Mississippi River, both in the same levee district, have fixed different percentages for assessment purposes. One has fixed 60 and one 40 per cent. Consequently, the 60 per cent parish will pay very much greater levee taxes than the 40 per cent. All these problems and many more minor problems may possibly be corrected by the legislature, but some of these faults under the present system are impossible of correction.

Perhaps the greatest problem that the board of state affairs has to deal with in Louisiana is the determination of values. This is a fearful question wherever assessments are made, but it seems to me that in Louisiana it has become more complicated than it could possibly become in any other state. We have many kinds and classes of property. A supervising board like ours must almost be omniscient in order to determine values.

First, there is our live-stock. We have every variety of horse and mule and cow and sheep and goat in Louisiana. We have the small Creole ponies of the Attakapas plains and the great Percheron dray horses of the cities; the little state-raised mules of the pine parishes and the great Missouri mules of the sugar parishes; the tick-infested scrub cattle of the piney woods and the beef cattle of the southwestern prairies; the Jerseys and the Holsteins of the dairy district. Our goats and sheep vary from the best to the worst. We have every variety of vehicle; the carriages and delivery trucks of the city, the light wagons of the country, the log wagons of the timber land, and the cane wagons of the sugar parishes. We

have every kind of manufacturing plant—cypress, pine, hardwood and mahogany saw mills; cotton gins, cotton compresses, cotton oil mills and cotton textile manufacturing plants; raw sugar houses, refined sugar houses, syrup factories, molasses canneries, alcohol distilleries, oyster, fish and shrimp packeries, and fertilizer plants.

We have almost every variety of agricultural land; land that produces cotton, corn, rice, sugar, truck, strawberries, oranges, and, in fact, anything that grows. We have vast amounts of timber land and every variety of timber grown in the southern states. We have great business interests in our cities; cotton brokers and factors, rice and sugar brokers, timber exporters, banks, merchants and dealers in every article of commerce. Through our great port of New Orleans we import every kind of property from almost every clime.

We have the greatest sulphur mine in the world, two of the greatest salt mines in the world, and we are the fifth largest oil and gas producing state. We have thousands of miles of railroad, varying from the 45 pound steel of the saw mill tram to the 120 pound steel of the Illinois Central. We have thousands of water craft of all kinds, sizes, and descriptions, from the great banana ships of the fruiterers to the pirogue of the swamper.

Then we have the fast growing young cities of Shreveport, Baton Rouge, Alexandria, and Lake Charles, with over 100 smaller towns and villages. To cap the climax of our mass of perplexing problems of municipal assessment, we have New Orleans, one of the largest cities in the United States, with its blocks and lots of every shape and size and its improvements, ranging from the two hundred year old buildings in the French quarter to the modern skyscrapers above Canal Street. Owning this vast variety of property is, perhaps, the most heterogeneous population in the Union: white, black, red, and yellow—we have them all.

The tax problems in Louisiana are such that a supervising board like ours must needs be almost omniscient and omnipotent to anything like approach success. We can only hope that we have to some extent improved a system that was very much in need of improvement.

THE TAX PROBLEM IN NORTH CAROLINA

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There is no one in North Carolina who can at this time speak for our state in the sense of forecasting with reasonable certainty what its future course in raising revenue will be. We have by constitutional requirement the uniform ad valorem system of the general property tax. Three years ago a constitutional amendment was submitted to the electorate to authorize classification and segregation, but the amendment was defeated by a large majority. An amendment is now pending authorizing departure from this rule to the extent of exemptions up to \$3,000 of notes and mortgages given in the purchase price of homes, running between five and twenty years and drawing interest not exceeding 5.5 per cent. There has been created a special tax commission, on which have been drafted some of the ablest men of our state, with the governor at the head, to investigate the general subject and to make recommendations to the general assembly of 1919. This commission has barely made a beginning on the problem before it, probably on account of the more pressing problem of fighting the Kaiser. Another element of uncertainty is the submission by the general assembly, which adjourned last March, of the question of calling a constitutional convention with authority to promulgate its will as the constitution of the state. This question is to be submitted at the general election of next year, coupled with a provision for electing members of the proposed convention at the same time. These recitals necessarily carry the conclusion that there is a recognized need for improvement and at least some demand for a substantial change.

Measured by some of the recognized standards, we have administered the uniform ad valorem system with a degree of success that compares favorably with other states. I believe that it is agreed by the authorities that as a general rule

the success or failure of this system may be measured by the proportion of personal property (that which may be concealed) which finds its way onto the tax rolls. The value of personal property on the tax rolls in North Carolina for 1916 was 51 per cent of the value of real estate. The average for all the states was 26 per cent. (Financial Statistics of States, 1916, page 126.)

Under this system of taxation, bearing directly upon every citizen from each political subdivision, the virtue of economy is rarely forgotten, and the authority just quoted shows that government costs less per capita in North Carolina than in any other state. The per capita revenue receipts of the North Carolina state government for 1916 were \$1.84; the next lowest, \$1.85; and the average for all states, \$4.67. Notwithstanding this low figure, it has provided a rapidly increasing revenue for the state and its political subdivisions. Assessed values have practically doubled in each of the last two ten-year periods, while average tax rates for local purposes have rapidly increased.

The measure of success with which the general property tax has been administered in North Carolina has been due almost entirely to two causes, both of which may be summed up in the one that it has not been overburdened. While our state revenue receipts for 1916 were \$1.84 per capita, only \$0.94 per capita was derived from the general property tax. Practically half the state's revenue was and is derived from privilege, license, franchise, inheritance, and income taxes. By diligent pursuit of these taxes we are getting further away from the general property tax for state purposes without withdrawing any property from local taxation. Any successful system of public revenue must necessarily be one of infinite attention to small details. When Uncle Sam really needs his billions he begins to gather in the pennies. It is fascinating to dream of some ideal system which automatically brings in the money in large and ample lumps, where the prose of dealing with the irate individual is turned into the poetry of admiring the golden stream as it flows through an automatic meter into the state treasury, but I do not anticipate finding such a flowing stream this side of the New Jerusalem,

where worn out paving blocks can be melted down and used to feed the public mint. When the worth while things of this world get to be automatic we had all better get very good.

If my mind has reached a satisfactory conclusion upon any one point, based upon experience in dealing with tax problems, it is that nine-tenths of the thing that in all states is called the tax problem is the problem of efficient administration in dealing with small as well as large details and successful enforcement of the laws from top to bottom and from bottom to top. This is indeed a great problem, and one that cannot be successfully met by shifting about from one "system" to another. It must be met and recognized as the problem that it is, as a problem separate from what we commonly understand to be meant by the tax system of a state. A dozen states may each have tax laws based upon different principles of taxation and in each the big question will be efficient administration. And the largest element of injustice in each system will be found in its lack of uniform enforcement.

North Carolina most assuredly has its tax problem. By using the general property tax merely as the foundation of its system of raising state revenue, and by supplementing it with numerous other forms of taxes for state purposes, it has had a rapidly increasing source of revenue, while leaving the bulk of the general property tax for local needs. But it is my deliberate opinion that, while in theory we are assessing all property at its money value, there are at least 5,000,000 acres of land in the state that will this year yield a net profit in excess of the assessed value of the land. The state tax commission two years ago undertook a state-wide equalization of real estate as between counties and horizontally raised assessments in 78 per cent of the counties from five to 30 per cent of the assessed value. But they do not cherish any delusion that by an order directed from the center to the circumference they succeeded in bringing about equality as between counties—and certainly their action did nothing to correct existing inequalities within the counties. Inequality must be the rule rather than the exception where 100 per cent is the prescribed measure and annual net income is in many cases the product of the assessment.

The problem in North Carolina, if the general principles of the present system are to be retained and successfully administered, resolves itself into two necessary courses of action:

The first is the one that is so often found emphasized in the annual proceedings of this association, and that needs to be continually presented and emphasized until it finds general acceptance—the necessity of providing more elaborate machinery for intelligent valuation of real property in the counties. To enact that this work shall be done by men paid \$2.00 and \$3.00 a day for thirty to sixty days in four years proclaims that we not only do not expect it to be well done but that in good truth we do not wish that it should be well done. That system is an inheritance from primitive times and has more than outlived its usefulness. This practice in North Carolina and in many other states is as if the owner of a large department store in one of our cities should pay his bill collector \$5,000 a year and the man upon whose judgment he was to rely in keeping posted on market conditions, quality and style of wares, and in buying all the goods for his store only \$30 a month.

Real estate can be appraised intelligently and with approximate accuracy and equality if, and only when, the legislative mind reaches the conclusion that it ought to be done and that it is willing to provide the machinery necessary to do it. The Panama Canal was dug by ordinary mortals after a nation reached the conclusion that it should be dug and provided the machinery to do it. We talk about how nearly an impossible thing it is equitably to value real property for taxation and then hire two and three dollar men for one-fiftieth of their time to do it. If the state is impotent to provide machinery that will intelligently and equitably ascertain the value of real property for purposes of taxation—the one class of property that stands out in full view on the face of the earth—then is our whole problem a hopeless one.

We cheerfully pay the salary of a county officer for his full time for almost every line of work in which the county is interested except this one line upon which the revenue for all other officers and all other public purposes largely depends. It seems to me that the plainest lesson in property taxation is

that we should begin at the bottom with a regularly retained county officer, regularly engaged upon some phase of this important work, with such trained assistance and such amount of time as he may need to map, inspect, gather information with respect to, and fairly value all the real estate of his county. And whether general valuations are made quadrennially, biennially, or annually, he should have authority to change valuations at any time with respect to any piece of property found to be more than 10 per cent out of line with other valuations. There is no serious difficulty in the way of finding place for this additional county officer in our general system. It cannot be said that poverty is in the way, for this kind of official would put into the treasury many times his cost in the discovery and listing of secreted taxable values, in addition to the more accurate valuing of real property. He could also be made to earn a large part of his keep by turning over to his supervision the work of making out the tax books, serving as county auditor, appraiser of estates for inheritance tax, etc. But we should not expect to have this work done intelligently without spending some money to have it done.

The second necessary thing is that this regularly retained, competent county officer should be told what to do. As secretary of our state tax commission I have answered thousands of inquiries from assessing officers as to what percentage of value they were expected to use and have never told one yet. The most spectacular development of this greatest of wars has been the "curtain of fire" — that complete co-ordination of cannon resources over long miles of front that with clocklike accuracy places one curtain of shell fire behind the enemy and another progressive one just in front of its own advancing infantry. Every gunner on the long line knows the exact distance his shells should reach. Our present method of real estate assessment is as if every gunner in France was told to take the Kaiser as a target and to drop his shells at such intermediate points as seemed most appropriate to the individual gunner. Certainly no general assembly of our state has desired or expected real estate to be assessed at full value, for it has never made any provision for adjustment of tax rates to that kind of assessment. Nor has it ever prescribed

or authorized anyone else to prescribe a percentage of value. For purposes of accuracy and equality it is immaterial whether 100 per cent or 30 per cent be the aim. For practical reasons I believe that a percentage of value could be used with best results in North Carolina under present conditions. Tax-payers instinctively feel, and not without reason, that when 100 per cent assessment is aimed at there is somewhere secreted in the shake-up the purpose to increase their taxes unreasonably. I say not without reason, for while assessed values have rapidly increased, average tax rates have also rapidly increased, and anyone familiar with the influences surrounding legislative halls knows that legislators do not have to hunt for ways to spend all the public money that can be reached. Every purpose of equity can be served by a percentage valuation, calculated to meet the public needs, and that would invite co-operation rather than antagonism. But the necessary thing is that a fixed target be given to shoot at.

The only practical difficulty I have been able to anticipate in the way of establishing an absolute standard is the practice that an easy public conscience has permitted us to pursue—applying a higher basis of value to some classes of property than to others. It is an open question as to how far this difference has been carried—probably not so far as understood by uninformed opinion—but we are already on notice, by decision of the United States Supreme Court in June of this year in *Louisville & Nashville v. State Officials of Kentucky*, that upon allegation of denial of the equal protection of the laws the federal authority would hunt beneath the surface to give relief where it could be shown that one piece or class of property was in fact subjected to a basis of value for taxation different from that of other property in general in the state. None but the most superficial thinker is longer fooled by this process of using public service corporations as collectors of public revenue. There is slight opportunity of improving the public welfare or the public morals by enforcing a double standard of values. The state itself must get upon a basis of conscious rectitude before it can enforce like conduct from the citizen. Assess all property by the same rule, and if one citizen or class of citizens exercises a privilege superior to that

of others, let it be reached by the imposition of an adequate privilege tax, or in the just regulation of the business in the interest of the public.

In no other sphere of governmental activity does conservatism so appropriately find place as in the methods of raising public revenue. There is a persistent tendency of social and economic conditions to equalize the burdens under any well-considered and well-maintained system of taxation, and it is impossible to make radical changes without taking from one that which is rightfully his and leaving with another that which the public should rightfully have, until time effects another economic adjustment. I regard it as one of the national misfortunes that our methods of raising national revenue should have separated the people into contending groups so well matched that with nearly every change of national administration we have had an abrupt change in our national revenue laws. Loyal to one of these schools of thought, I nevertheless believe that we would have had a superior national development under any one of the varying shades of thought, intelligently applied as a continuing policy and changed only in obedience to changing conditions. In no other field of government is the value of custom more apparent than in taxation. It is an asset of value when the people become acquainted with the machinery and when they carry in mind, year after year, the schedule on which it runs. Custom makes the load pull more easily.

But along with conservatism there must be progress in taxation or there can be little progress in any other line of governmental activity. Changes must be made to meet changing conditions, or there will be dry rot and stagnation. Changes of almost revolutionary import have taken place since the days when the general property tax could be relied upon to furnish all needed public revenue. Today the public demands that the government do things for it far beyond the comprehension of even a decade ago. I have never been able to agree fully with the report of the committee of this association in 1910 that condemned the ad valorem system as a complete failure, and have not been able to avoid a suspicion that where it has broken down it has been due either to an expectation

that it could be made to meet the needs of a modern state under administrative methods of a generation ago, or that it has been overloaded and because it would not pull the tremendously increased and increasing load without squeaking it was unqualifiedly condemned. It was founded upon a principle that its opponents have found difficult to match in equity. By almost universal consent it remains the basis of much the larger part of public revenue in all states in supplying the needs of local revenue and is the basis of both state and local revenue in many states. So that, whatever our individual opinions may be, its successful administration remains the greatest problem in taxation within the state.

It is unquestionably overloaded when we seek to make it bear all the burden of increased revenue which modern progress demands of modern government. It does not lessen this strain to separate property into two groups and to say that one group shall bear all the burden of local government and the other group all the burden of state government. To relieve this strain and to leave as far as practical the general property tax for local needs it should be liberally supplemented by such forms of taxation as can be equitably levied concurrently with it for the benefit of the state. In the wide range of possibilities in this field I would give first place to the inheritance tax. In its infancy we found it slow to respond to legislative enactment, to some extent a characteristic of any new form of tax, but after several years of effort it is now being generally enforced and will this year be an important item in the state's revenue, and will furnish increasing revenue as administration is improved and the larger estates come within its reach. We adopted in 1913 substantially the provisions of the model inheritance tax act recommended by a committee of this association. In the last three years we have more than doubled the state's income from privilege and license taxes, mainly by improved methods of administration and enforcement. The income tax helps, but in our state it is limited by constitutional prohibition of taxing incomes from property.

I wish to suggest for consideration and discussion another form of tax to supplement the general property tax — one

which so far as I have been able to learn has not been tried out in any American state. We are living in a day of rapidly changing conditions. The boys on their way to France will return to a very different state. After they have won the most glorious victory in human history they will return to receive the plaudits and the everlasting gratitude of a country that has become the first nation of the world in productive industry, in finance, in shipping, and that will occupy pre-eminent position as a moral force in the world. These things necessarily mean abundant and abiding prosperity for all our people. But I am not certain that, after establishing their title to historic immortality, they will not return to their several states to find among other things that a home in which to live or a little farm to cultivate are further from their reach than when they left. Under existing and continuing conditions a constantly increasing percentage of our people will be renters and tenants. Real estate values will continue to reach far higher levels. What sound objection can be raised to a moderate form of transfer tax which would turn into the public treasury, for the benefit of the whole public, a small part of the increased value of real property that will be created by the whole public? A graduated tax to be based on the unearned increase in value, or the value other than that created by structural or other artificial improvement, dating from a given time when its value for this purpose should be ascertained. The making of a valuation for this purpose would be an aid to accurate valuation for the annual ad valorem tax. It would give the owner in each case a conflicting interest. Against the desire that it should be valued at a low figure for the annual tax would be the conflicting wish that it be given a high value so that it would be caught for a lower transfer tax, and between these conflicting interests it should be easier for the assessing officer to arrive at its true value. This would create a situation somewhat similar to that when public service companies appear before the North Carolina Corporation Commission to argue for inflated values when rates for their service are in issue, and before the same gentlemen as state tax commissioners to argue a depreciated value when their properties are assessed for taxes

—a situation as interesting and informing as when two Juliets compare notes from the same Romeo.

This principle of taxation found legislative expression in England, Germany, and other countries before the war. There is greater reason for this form of tax in our states than in any of those countries, because development is adding value to real estate much more rapidly in this country than in any of the old countries. As indicating its possibilities from a revenue point of view, the assessed value of real estate, including betterments, practically doubled twice in North Carolina in the last twenty years and the assessed value is further behind selling value today than it was twenty years ago. If actual value, not including betterments, should double once in the next twenty years, and if one-tenth of the increase could be claimed by the state for the benefit of the whole people who create it, it would furnish an average annual revenue for that period in excess of the annual revenue of the state from all sources at the present time. It would undoubtedly have a tendency to stabilize real estate values, and insofar as it failed to do this it would be creating revenue for the state. It is a form of tax that cannot be shifted to the "ultimate user". It is a field that will not be occupied by either federal or local authorities. It seems to me that, after the few years necessary to establish it, it has the possibility of furnishing enough revenue in our state to take the place of that now received by the state from the general property tax. There are, of course, administrative difficulties in the way and it should not be undertaken by any state that intends to administer its tax laws in a slipshod fashion. But does it not offer a sufficiently inviting field of equitable taxation to challenge our serious considerations? While they are "going over the top", risking their lives and giving their lives to make the world safe, is there not something that we can do, even in matters of taxation, to make it more tolerable for democracy?

The subject of a transfer tax I am presenting deferentially, in the form of an interrogation to the tax students of this association, and I should be very glad to hear some candid discussion of it. The theory that I do present with some confidence as practical for North Carolina, perhaps for some

other states, is a system of state privilege taxes in lieu of the classified property tax and the gradual building up of a system of independent state taxes, in lieu of segregation as commonly understood, that will reduce to a minimum the state's property tax, without withdrawing any class of property from the reach of the local taxing powers. This is in line with an address given by Professor Plehn at a former conference of this association. At that time he said:

“ To my mind the ultimate solution is to be found in what I am accustomed to consider as true separation as distinct from segregation. This is the establishment of new and independent taxes for state purposes.”

If I may not have that peculiar sense of satisfaction that goes with the discovery of a new idea, I may at least have the personal satisfaction of helping to push along a good one.

TAXATION IN OKLAHOMA

CAMPBELL RUSSELL

Member Oklahoma Corporation Commission, Oklahoma City, Oklahoma

During the current year the state of Oklahoma, including its various subdivisions, will expend for maintenance of government, including public expenditures for education, for internal improvement, and interest on public debt, approximately \$32,000,000. A little more than \$29,000,000 of this will be raised by taxation, the remainder being derived from interest on our permanent educational fund and from our public building fund. Some \$23,500,000 of this will be raised by the direct ad valorem property tax, and about \$3,500,000 will be secured from the tax upon oil and gas production; nearly \$1,000,000 from the automobile tax; probably \$500,000 or more from the income tax, and the remainder from corporation charter fees, annual license taxes, mortgage filing fees, inheritance taxes, the tax upon insurance companies, and small sums from various other sources that are of little concern to this conference.

Oklahoma was among the first states to enact income and inheritance tax laws, yet after a ten years' trial these are still of comparatively little importance as revenue producers. Less than one-half of one per cent of the taxes collected in our state since these laws were enacted has been derived from the income and inheritance taxes combined. So far as actual results are concerned, we still rely almost wholly upon the direct property tax, designed to apply as uniformly as practicable to all classes of property.

Our tax of three per cent upon the value of the gross production of oil and gas may at first blush be thought inequitable as compared with our general ad valorem property tax, which averages between 17 and 18 mills annually. However, the actual cash value of an oil producing property is approximately three times the value of a year's production, so that the three per cent tax upon production becomes a one per cent

tax upon the value of the property. The apparent inequity now shifts to the other side, and a tax as low as three per cent is defensible only upon the theory that property is ordinarily assessed for taxation at about 60 per cent of its real sale value. This is correct as to a large percentage of our assessments. The man who can devise and effectively apply a system that will secure uniform valuation of property for purposes of taxation will not have lived in vain.

Realizing that the sentiment in Oklahoma is in favor of securing for the future a much larger per cent of the cost of government from income and inheritance taxes, and assuming that this sentiment is shared by other states, I shall devote my time to a brief review of the causes of our failure to secure results from these sources of taxation in the past, with suggestions as to how these laws may be successfully enforced.

To quote from the income tax law enacted by the first Oklahoma legislature in 1908:

"There shall be levied . . . upon all gross incomes

"The above tax shall not be levied upon the income derived from property upon which a gross receipts or excise tax has been paid."

The two points of glaring injustice which overshadow everything else in this law are: (1) taxing the gross income, without regard to cost of producing same; (2) exempting from taxation incomes derived from property paying a gross receipts tax, regardless of the net profit secured.

To illustrate clearly the inequity of this provision: A and B have each \$25,000 to invest. A borrows \$25,000 additional from friends and invests \$50,000 in a manufacturing plant. During the year he has a gross income of \$100,000, expending \$90,000 in operating expense. Near the close of the year his property is burned, being a total loss and no insurance. His taxes (allowing \$30,000 valuation and 25 mill rate, including city tax) would be \$750; interest on borrowed money at 8 per cent, \$2,000; original loan, \$25,000; total \$27,750 indebtedness. B invests his \$25,000 in oil production, producing during the year \$100,000 worth of oil. The gross production tax at that time was 5 mills (just one-sixth of what it is today) or \$500; tax on physical equipment on leases (perhaps) \$250;

total expense of year's operation, including taxes, probably \$30,000.

Comparing the two we find that as a result of the year's business A has lost his entire capital, and after surrendering the last dollar of his year's income he is in debt \$17,750, in addition to a tax of \$1,552.50 due the state on his "gross income". B, as a result of his year's business, is possessed of a property worth approximately \$250,000, and has a net income from the year's business, in cash, of \$70,000, exempt under the above quoted law from the payment of any state income tax. This illustration is not an extreme case, but shows sufficient grounds for the unpopularity of this law and accounts very largely for its non-enforcement.

Quoting now from the income tax law enacted in 1915:

Section 1. Each and every person in this state shall be liable to an annual tax upon the entire net income of such person arising or accruing from all sources during the preceding calendar year, and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income from all property owned, and of every business, trade, or profession carried on in this state by persons residing elsewhere.

We note that the entire net income from all sources is subject to this tax; also that this tax shall apply to all incomes derived from property owned, and from every business, trade, or profession carried on in this state by persons living elsewhere. Under this law the 1915 tax collected to date is slightly over \$250,000, and the 1916 tax collected is a little more than \$400,000. The increased collection is partly to be attributed to the fact that until the last legislature met there was no appropriation that the state auditor could use to pay expenses incurred in this work. The difficulty in collecting this tax has been greatly increased by the fact that for six years we had on our statute books an income tax law so viciously unjust in its provisions that practically no attempt at enforcement was made, and the public has been trained to consider the state income tax as largely a donation or free will offering to the state. A very large majority of our people agree that the net income tax law enacted in 1915 is just and equitable and should be enforced. The last legislature appro-

priated \$5,000, annually payable, to be used for this purpose and no complaint is heard from any source that the state auditor has in any way neglected his duty in this matter; yet a few figures will show the remarkably small per cent of this tax actually paid, although the 1916 tax is now long over-due. Clearly no additional collections are to be expected where payment of same can be avoided.

The personal income tax collected by the federal government from Oklahoma citizens for the year 1916 was \$4,428,000. Assuming that an equal amount of this was collected from each of the 14 steps in the federal classifications, and then applying to the incomes shown to have been received in each class the income tax rate of the state applicable to each portion, we find the state should have collected from these same individuals upon these same incomes the sum of \$2,627,572. In addition to this, millions of dollars of federal income tax were collected from incomes upon property owned and business done in Oklahoma by persons living elsewhere. These collections are not credited to Oklahoma and are not included in the \$4,428,000 above set out. Under the state law these incomes are taxable in Oklahoma. No one can do more than estimate what this tax, if collected, would amount to; but inasmuch as a large majority of our oil properties are owned outside the state, and that a very large proportion of our income taxes are secured from this class of business, it is not an unreasonable estimate to say that the tax from this source should equal the amount that it is shown above should have been paid by citizens of the state; but if we include only one-half of this amount, or \$1,313,786, we show \$3,941,358 as the sum which the state should have collected for the year 1916 upon personal incomes, exclusive of the incomes received as dividends upon corporation stock, the federal income tax upon which was collected at the source. Oklahoma has no corporation income tax, so that no one is entitled to any reduction on his state income tax for taxes collected at the source. Personal income taxes paid to the state would in many instances be largely increased by the addition to the taxable income of the dividends from corporation stock, the federal tax upon which has been collected at the source. All things considered,

\$4,500,000 to \$5,000,000 is a conservative estimate of the amount of income tax due the state of Oklahoma for the year 1916. Less than 10 per cent of this amount has been collected.

Oklahoma has collected only a few thousand dollars in income tax from persons residing outside our state and this provision of our law is now being vigorously contested in the federal court by a citizen of Illinois whose income tax (as per statement rendered by him) due Oklahoma for the year 1916 is over \$76,000. This case (testing the constitutionality of this feature of our law) was heard before three district federal judges in Oklahoma City some two weeks ago, and will doubtless go to the Supreme Court of the United States. It seems not unreasonable to anticipate that the government that collects a tax upon the incomes derived from all property owned or business done within its jurisdiction, regardless of the citizenship or residence of the owner, will probably sustain the right of each state to collect a tax upon incomes derived from property and business within the state, although the owner may live elsewhere.

Our 1917 legislature placed our income tax rate on the reverse gear, reducing the rate on the smaller incomes 25 per cent; next step, $33\frac{1}{3}$ per cent reduction; next, 50 per cent reduction; and the rate on incomes above \$100,000 was reduced 60 per cent—from 5 per cent to 2 per cent, which is now our maximum rate. The argument advanced to secure this reduction was not, in the main, that the rate was unjust, but that the reduction was necessary in order to prevent our rich men from removing their residences from our state—assuming that thereby they could escape our state income tax, while still enjoying the profits from the property owned and business carried on within the state. Until our right to collect an income tax from persons living without our jurisdiction has been finally determined, it is hardly proper to include the possible collections from that source in estimating the per cent of the tax actually due which has been collected; but considering only the amount unquestionably due from citizens of Oklahoma, not more than 15 or 16 per cent of the 1916 tax has been paid. The remedy is contained in one word, *publicity*. So long as the tax collector must play hide-and-seek in

the dark with an unwilling taxpayer and must keep secret what he does discover, we may reasonably anticipate that results will continue to fall far below expectations. Personally, I see no good reason why incomes should be kept secret. The man who is able to secure a large income, if it be secured through honest endeavor, should not be ashamed of that fact. However, unless the necessities of war shall change the policy of the federal government, we may expect the veil of secrecy to continue to screen the income taxpayer (and the income tax-dodger as well) from public view. It is probable that through concerted efforts upon the part of interested states the federal authorities may relax their rules sufficiently to permit the proper taxing authorities of a state to inspect the federal income tax records covering that state.

The income tax collected by Oklahoma for the year 1916 exceeds the combined collections of the other seven years, yet the collections for that year do not exceed 1.5 per cent of the total tax collected in the state for such year; these things indicate somewhat the immensity of the tax problem. Taxation has long been and to the end of time will be one of the most difficult problems connected with human government.

TAXATION IN TENNESSEE

W. A. OWENS

LaFollette, Tennessee

This paper is especially directed to the questions of taxation applicable, so far as I know, solely to Tennessee. But first allow me to quote from the law writers certain fundamental propositions which must be admitted upon all sides. The law writers say :

“ The power of taxation rests upon necessity, and is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent state or government, and is as extensive as the range of subjects over which the power of that government extends. As to such subjects and in the absence of constitutional restrictions, the power of taxation is practically absolute and unlimited, the only security against an abuse of the power being found in the structure of the government itself in that when imposing a tax the legislature acts upon its constituents. The sovereignty of a state or nation extends to everything which exists by its own authority, or is introduced by its permission, and to be limited accordingly so that everything over which such sovereign power extends is an object of taxation.”

“ For the purpose of the general government, Congress has power to lay and collect taxes subject alone to the limitations imposed by the federal constitution.”

POWER OF STATE TO LEVY TAXES—“ Except insofar as it is limited or restrained by the provisions of the constitution, national or state, the taxing power of a state is general and absolute and extends to all persons, property, and business within its jurisdiction or reach.”

“ Taxes are classified in various ways, but ordinarily as either being direct or indirect, or as being either specific or *ad valorem*. There are, of course, various other minor classifications and designations according to that upon which the tax is laid, or the purpose for which it is imposed.”

In Tennessee in addition to the above methods a great deal of money is raised by a licensing system, whereby a privilege tax is imposed upon nearly all businesses and corporations. Men engaged in active business complain that they bear more than their fair proportion of the burden. Usually a privilege tax is imposed for the privilege of doing business and in addi-

tion an ad valorem tax is collected upon the capital invested in the business. Against this alone there could be no particular objection, save for the fact that the rate of the ad valorem tax is usually very high and in this way the tax may become burdensome.

It is the practice in Tennessee to assess real estate at from 25 to 40 per cent of its real value, which would indicate that the people pay a very small or a very reasonable tax. This method is subject to serious criticism and, in my judgment, is the source of the tax evil. The state rate of taxation is 3.5 mills, while the legislature has allowed the county courts to impose levies for special purposes in addition to the general levy for county purposes, by which method the rate of taxation in a great number of cases ranges from \$1.50 to \$4.00 per \$100. The result of this excessive rate which may be imposed by the counties is that the landowner reports his real estate at from 25 to 40 per cent of its value. The man with personal property refuses to give in all his property that can be concealed, such as moneys, notes, stocks and bonds, etc., by which method the bulk of this property escapes taxation.

The merchants and business men depreciate largely the value of their stock, with the result that the people are forced (or believe they are) to act dishonestly with the state. This condition of affairs has grown out of an effort upon the part of our officials to deceive the public into the idea that revenue sufficient to run the government can be obtained by some indirect method and by imposing penalties upon corporations and privileges upon business. In my judgment, the remedy for this evil is to devise a method whereby the state can deal honestly and fairly with the citizens. Let it be understood that all shall contribute their fair share in bearing the burden of the administration of the government.

As a remedy for the evil under which we labor, I would suggest that the legislature limit the rate of taxation that may be imposed not only by the state but by each county and municipality. In fixing this, the state rate should be placed at 25 cents and the county rate at not exceeding 75 cents. In this way the rate of taxation could not exceed one per cent; and with that rate millions of dollars of personal property

that now entirely escape taxation would be taxed and many more millions in the increased valuation of real estate, while other millions would be found in taxing the real value of stocks of merchandise, bonds and other choses in action.

The constitution of Tennessee ought to be amended so as to repeal that portion exempting from taxation \$1,000 of personal property. Behind this provision millions upon millions of personal property have escaped taxation in Tennessee. By fixing a fair and reasonable rate, it would be possible to collect from each individual his fair proportion of taxes; to collect much more revenue, which would be more nearly equally proportioned, each bearing his fair share of the burden. When an individual is made to feel secure in the rate of taxation that is to be imposed upon him, which must be a reasonable rate, he will willingly come forward and list his property at its fair cash value; whereas, under the present method, the state forces him to act dishonestly, to hide, and cover up, depreciating the value of his property in self defense and in the preservation of his property. His real property he lists at much less than its value; such of his personal property as he can conceal he declines to give in. But should the state deal fairly with him there would be no excuse for his acting dishonestly toward the state, withholding, hiding, or concealing his property.

Under the present method, the man with a small farm costing less than \$1,000 generally pays on the full value of his property, whereas the man with a farm worth from \$10,000 to \$20,000 or more will pay upon only about one-fourth its value. Again, the man with his money invested in a business, such as banking, under the law is required to make sworn publication of his assets, thus enabling the public and the tax assessor to see what he has, and he must pay taxes upon the full value of his property; while the man whose wealth consists of cash, bonds, stocks, etc., which cannot be seen, either escapes taxation or pays on only a very small proportion.

Under the present system, with the rate so high, a man loaning money at six per cent cannot in justice to himself give in all his moneys or notes. The counties are imposing from two to three per cent, and if he should live within a

municipality it imposes not less than 1.5 to 2.5 per cent, making a total tax rate of from 3.5 to 5 per cent. The result is that the present method makes the citizens dishonest, or rather makes them so act. Relief will only come when the laws are so formed that the citizen is assured that the government will act fairly with him, and the burden be more equally distributed.

The method I have offered may be criticized upon the theory that it would not produce revenue sufficient to meet the current expenses and provide a sinking fund to retire outstanding obligations. A little investigation will show the fallacy of this criticism. Not over one-fifth or one-fourth of the wealth of Tennessee is now taxed. The tax aggregate of my own county, Campbell, is in round numbers \$6,000,000; upon the other hand, in round numbers, the wealth of the county of Campbell, according to the last federal census, is \$27,000,000. The tax rate, including taxes for all special purposes, is \$2.20; to this must be added 35 cents for state purposes, making a total tax rate of \$2.55. In the municipality of LaFollette a \$2.00 rate exists, and in Jellico a \$3.00 rate. Such rates added to the county rates make the total rate so exorbitant as to call for dishonest dealing, or the confiscation of the profits if not some of the corpus of the property to be taxed.

Upon this assessment and with the present rate in the county, we collect about \$132,000 in taxes. The state gets only \$18,000 of this money, and under the present revenue act one-third of this amount comes back to the county for school purposes; whereas if we had no exemption of personal property, and the rate for all purposes was only one per cent, with our real wealth, as shown by the federal census, assessed, we would collect \$270,000 in taxes, and with the state's rate 25 instead of 35 cents, the state would receive about \$67,500. But, lest some one be misled by this statement, it may be safer to say that if the rate of taxation could be reduced to a reasonable one, not exceeding one per cent, at least 50 per cent of the wealth of the state would be reached and assessed for taxation. In Campbell County we would have \$13,500,000 of property assessable for taxation, which at one per cent would produce \$135,000, being more than we get under the

present arrangement; and as against \$18,000 the state would receive \$33,750, at a rate of 25 instead of 35 cents. As a further proof, go to any merchant; ordinarily you will find his stock listed for taxation at one-fourth its value. This is shown when a fire occurs. Merchants—some of the best men in the country—will have a stock of goods listed for taxes at \$2,500, while carrying on the same stock insurance of from \$8,000 to \$12,000. The insurance company pays for a stock of goods that has been destroyed \$10,000, while the merchant pays taxes on \$2,500. The rate is such that the merchant is forced to act dishonestly, and the state and county lose revenue.

If I had time, I could show that what is true of Campbell County applies to each county in the state. You will find that a much greater difference in the value of the property exists in the larger counties than in the smaller counties. I do not know about other states but, from what I have been told, to a great extent the same condition exists in them as does in Tennessee. It may be said that the solution I suggest would be all right provided the counties were not so largely in debt for internal improvements, etc. But in order to take care of these matters each county by a popular vote might impose an additional levy for one year at a time, and from time to time, for the purpose of retiring its present bonded indebtedness and for further internal improvements.

I am quite sure, however, that in a very few years by practicing a little economy the counties would find themselves in a position to retire their present indebtedness, with funds to meet all requirements in addition to building more and better roads, and to have longer and better terms of schools, all at a reduced rate of taxation. It can be seen from an examination of the figures submitted which rate or proportion will hold good over the entire state; that the state within a very short time would be able to retire its present indebtedness; and in a few years would be in a position to aid the several counties in building roads, if not take over entirely the question of highways, especially all leading through the counties and connecting the several county seats. It is my judgment that, once this method is put into operation, in a very few years the counties would not need a 75 cents levy, but could do with 50 cents

or less; the reason being that under the increased assessed valuation the state would receive larger sums and would return a much greater fund to the county for school purposes, more than double the amount now received by the counties from the state; and with the state lending aid in the way of roads the counties would not require so great a levy. By reducing the rate, you will not only bring property from its hiding, but you will attract capital to the state; new enterprises will be established and in a very short time your tax valuation will be greatly increased from this source. One trouble, to my mind, has been that our law-makers have spent too much time in trying to devise methods of assessing property for taxation, thereby losing sight of the real question that would bring forth property for taxation. The matter of assessing property for taxation is a subject within itself, underlying the raising of revenue, but it is not of itself necessarily difficult, provided a citizen has been assured that the rate cannot be raised to the point where the burden of taxation will be rendered unnecessarily grievous.

There are other suggestions connected with the propositions here laid down that would further prove the truth of the proposition that the tax evil complained of is found to exist in the rate of tax imposed, rather than in the assessed valuations of property, but for the present I submit these for your consideration.

THIRD SESSION

WEDNESDAY MORNING, NOVEMBER 14, 1917

CHAIRMAN—C. B. GARNETT, VIRGINIA

ROUND TABLE

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ROUND TABLE

CHAIRMAN C. B. GARNETT: I have learned from our indefatigable treasurer, who is in a large measure responsible for the program this morning, that the gentlemen who prepared the papers read yesterday were requested to present for the consideration of the conference the actual difficulties and problems met by them as state officials in carrying out their respective state tax laws; and he has also informed me that it is the object of this conference to take up and discuss the problems presented by these papers, so that by comparison of experiences mutual benefits may be derived. I have followed very closely the papers read with a view to re-stating, if possible, the difficulties and problems for discussion this morning.

There is one problem which has vexed other states that our friends from Georgia, Louisiana, North Carolina, and Oklahoma have all failed to discuss, and this omission has left an aching void which the presiding officer must fill by a mere statement thereof, to wit, the problem of putting intangible property on the tax roll. It would be instructive if the representatives from these states would lift the veil.

As I caught Judge Hart's remarks, he seems to have the conception that as tax commissioner of Georgia it is his chief concern: (1) to educate the people in regard to the tax laws and their duties thereunder; and (2) to work through the local boards for a better primary assessment. Under the first head, it would be interesting to hear a discussion of the different methods used by the tax officials of the different states for educating the people on the problems of the tax officers and the duties of the taxpayers. Under the second head we might profitably discuss the relation between the central tax board of the state and the local assessor; as to the power of appointment and of removal, the duty to instruct by conferences, and whether these conferences should be state-wide, by districts, or by individual instruction. From Mr. Maxwell's paper we gather that North Carolina's problem is primarily

one of administration and that some of the specific questions of administration are a better method of valuation of real estate, and in this connection the necessity for better pay and longer term of employment of the assessor; instruction of the assessor; and the necessity for establishing a standard of valuation. Mr. Maxwell refers to the Kentucky tax cases recently decided by the Supreme Court of the United States. He also suggests a real estate transfer tax to reach the unearned increment. This should lead to some interesting discussion.

Mr. Milling's clear, concise, and excellent analysis of the recently enacted tax law of Louisiana raises some very nice questions, the first and most interesting of which is the desirability of having one standard of valuation for local purposes fixed by the local board and another standard for state purposes fixed by the state board. Other questions suggested by Mr. Milling's paper relate to the methods of ascertaining the value of real and tangible personalty and to the attitude of the taxpayer towards the payment of taxes.

The paper of Mr. Russell of Oklahoma, showing the defects in the administration of the income tax law, suggests as a topic the question why the federal income tax law is more efficiently administered than the state law on that subject. The meeting is now open.

MR. W. H. KNAPP, of New York: One of the first papers I heard here was by Judge Hart, in which he expressed the hope that Georgia would some time provide for a conference of the local assessors. I want to say as to New York that the present state tax commission held a year ago last January in the city of Albany a meeting of all the local assessors of the state. Under the act authorizing it, local assessors were required to attend. We have nearly 3,000 local assessors in the state of New York and about 2,300 of them attended this conference; and I want to say that I believe we got more good out of that conference and were of more help to local assessors by means of that meeting than by anything else the tax commission of New York state has done. Of course, there are local assessors who have heads so thick that nothing would

impress them, but there are others who are open to suggestion and to appeals to their better nature, and who are willing to go back and obey the law. I was much pleased at a statement made by the commissioner of finance of Buffalo, Mr. Hill, in an address which he recently made to the convention of mayors of the state of New York. He said he was new on the job when he came to Albany to attend this conference as the commissioner of finance of the city of Buffalo, but that there he got an inspiration. He went back, called all his deputies together, and laid out the work for them and for an entire revision of the valuations of the city of Buffalo, consisting of about 110,000 parcels. They increased the assessment from \$350,000,000 to over \$500,000,000 in one year, reducing the tax rate from about \$30 on \$1,000 to about \$21. Besides that, they equalized the burden over all classes of property and all individuals. The minute you attempt to get a percentage valuation you are going to do injustice, especially to the smaller taxpayer.

We can hold these conferences once in two years. The assessors get together, they touch elbows, they cease to be afraid of each other, and they are urged to obey the law and to make the oath to which they attach their names at the end of the roll mean exactly what it says—that they have assessed all real and personal property at the full and fair market value thereof. I want to commend a meeting of the local assessors and assessing boards to all of you gentlemen from other states. It is a great move in advance. In the state of New York we increased the assessment of property in one year—we believe largely through this means—something like \$400,000,000. That is practically half the assessment of the state of Georgia, the total assessment in the state of New York being \$12,000,000,000.

CHAIRMAN GARNETT: That particular subject is one which we should perhaps continue for a while—conferences between the central taxing officers and local officers. We will be glad to hear the experience of other states and the other taxing officers of New York on the same subject.

MR. RALPH W. THOMAS, of New York: As you have mentioned other taxing officers of New York, perhaps there would be no better time to supplement the statement of Judge Knapp by way of completion of the work we are doing. We in New York are in hearty sympathy with the educational work of this conference. One of our methods in trying to advance that work Commissioner Knapp has described to you, the biennial conferences of assessors. There is another method that we have which I think sometimes is fully as efficient in accomplishing results. That is the biennial visits of the commissioners personally to the several counties. At that time we meet the assessors around a table, the assessors and the supervisors of each town. We take up the sales in that district for the last two years and compare the sale prices with the assessed valuations on the rolls. Over and over again, as you will of course understand, there is great difference between the two. Sometimes the property sells for very much more than it is assessed at, and then occasionally—and it does not very often happen—it is assessed for more than it sold at. Then the assessor has a chance to explain, and again and again it has been our experience that in that explanation we have found some fundamental difficulty which the local assessor has had in assessing that and much other property in his district.

Once in two years the commissioners in New York personally have these round table conferences with the assessors in every county in the state and that has been one of the effective elements in bringing about the great increase in the valuation of the property of the state. There we can put our finger upon what I believe is the fundamental difficulty with the assessment of property throughout the United States; that is, the ease with which the American taxpayer will fall for a fundamental fallacy. The most important work this conference is doing is its educational work, and, if we can get to the point where the taxpayer will not be scared because his property is to be assessed at full value, we can do away with equalization and all its injustice and all its problems and vastly simplify our work. When you talk to a man about assessing a property at \$10,000, its full and fair value, which last year was assessed for only \$5,000, 50 per cent of its value, he goes into

the air, of course, and thinks what that means is that his taxes are to be increased 50 per cent. Not so. If we could only smash that fallacy it would do a lot toward our progress. But over and over again the taxpayer has found that his tax *has* been increased when his assessed valuation has been increased. It is not because of the assessment; it is because the expenditures have gone up. It is because legislators have not held down expenditures. It is because the rate has gone up. And is it not true that if we could cease putting so much of our effort upon the assessment of property and marshal our energy against the expenditures of legislatures and expending officers we would get far more in the way of efficiency in our work?

A lightning rod agent struck a peculiar type of fellow on a farm. After the agent had his say about the excellence of his lightning rods, the old man said: "You can't sell me any of those things; in my judgment the lightning is never going to hurt us; it is the thunder that is going to knock us all end-wise some time". The agent said: "Now, a great majority of people think the other way, but there are a few sensible men in this country and I knew I would strike one; and so, while most of my stock is lightning rods, I have brought along a few thunder rods. You see all those silver-tipped rods? Well, those are lightning rods. But I have a few gold-tipped rods here and they will take care of the thunder." And he was such a sensible agent that he induced the old man to put the gold-tipped rods on all his buildings. For the "thunder" read "full value assessment" and you have a picture of the most prevalent tax fallacy of our time. The great thing for which we ought to strive is to get to the taxpayer again and again that the place where he ought to concentrate his force is not on keeping the assessment of his property down but on keeping down the expenditures of the public money. Not the assessment rate but the tax rate is the thing for him to look at.

I merely want to mention again the thing I really got up to say this morning. Some of our best work, I think perhaps our most important work, lies in the province of our committee on education, and I appeal to every man here, as we

are standing for it in New York, to back the efforts of that committee in every way possible to educate our people so that they will leave finally this fundamental fallacy in taxation.

MR. GEORGE POTTLE, of Maine: I have been much interested by the remarks of the gentlemen who have preceded me—Judge Knapp and Mr. Thomas. They have well emphasized and pointed out the most important work which this conference can perform and the most efficient service that a state board of equalization can render, and that is through a campaign of education.

In the state of Maine it is one of the principal duties of the state board of assessors to hold meetings each year in every county of the state. At these meetings one or more of the members of every local board of assessors in the county are required by law to attend, bringing with them their latest assessment book, and the work of each city and town board is taken up separately. We sit around the table about as described by the gentleman from New York, and there take up every phase of taxation. Recent sales are inquired into, and general business conditions in each municipality; in short, everything is considered that seems to have a relation to the question of valuation and taxation.

It is very difficult for a state board of equalization to undo the evil of a wrong local assessment. For this reason it seems to me that the most efficient service a state board can perform is to bring the local boards of assessors before them, and through the process of instruction and education to impress upon their minds the importance of making all local assessments fair and equal, and in strict compliance with the law. Thus the whole work of the state board becomes more simple and the adjustment of one section of the state with another, one class of property with another, becomes easier.

Again I wish to endorse every word that was said by Mr. Thomas, that the best service this conference can perform is educational. We should endeavor to instill into the minds of the people of our country the importance of selecting competent and faithful men to make the apportionment of taxes, to the end that they shall be approximately equal. Exact

equality cannot be attained by mortal man, but none the less we should strive to reach approximate justice and equality.

The need of the times everywhere is for more efficient administration, rather than for more drastic legislation.

MR. WILLIAM BAILEY, of Utah: I would like to ask the gentleman from New York a question. He stated that it was their custom to visit the various counties twice a year.

MR. RALPH W. THOMAS: Once in two years. We are required to cover all the counties in the state once in two years.

MR. WILLIAM BAILEY: And when you make those visits you look into the sale values?

MR. RALPH W. THOMAS: Yes. The assessors are required to furnish a list which is supposed to be a complete list of all the sales of real estate that have taken place in the district.

MR. WILLIAM BAILEY: The question I want to ask is: does your law provide for a true consideration in the deed?

MR. RALPH W. THOMAS: No.

MR. WILLIAM BAILEY: Then it appeals to me, gentlemen, that there is little virtue in the process, because that is the law in our state of Utah. We have been doing that, visiting the counties and taking off some 40 to 50 transfers, but in looking through them you have to guess at the amount, since most of them will say in consideration of \$1.00, a fictitious value all the time; when you take off those considerations you have nothing. It looks to me as if there should be a law in every one of the states compelling true consideration in every one of the deeds. Some real estate dealers, of course, object to this; it interferes with their business to some extent, but that can be overcome by putting it in the affidavit and not having it a public thing. How can you take off your considerations and get anything unless that is the case and how can you get at the price of this property unless you do it in that way?

MR. W. H. KNAPP: The federal stamp act will help us some this year.

MR. WILLIAM BAILEY: I know that will help, but that is not sufficient. The true consideration in the deed is the desirable thing.

I am in favor of these conventions being held. In our state we elect assessors every two years and we find that the first year usually they are green at the job and the second year they are scared because they want to be re-elected, so that you do not get any real assessments. There is the situation. I am thoroughly of the opinion that these conventions are a desirable thing, to get these local assessors in touch with the work and give them courage. They need that. Give them courage and help them out in getting the assessment right because it is impossible for any board of equalization or tax commission to make an equalization that will be anywhere near just, to raise any class of property. You are not remedying the evil; the initial assessment is what you want to get at in working with these assessors, getting them acquainted with their work, in helping them. I would like to see a resolution passed to that effect, that the states work for that one thing, the true consideration in the deeds.

MR. CHARLES A. PLUMLEY, of Vermont: In 1910 the legislature of Vermont passed a law providing that the commissioner of taxes shall hold meetings annually in every county throughout the state for the instruction of the listers. During the year, preceding the date of our assessment, which comes on April 1, bulletins are distributed among all the listers, covering answers to questions which confront our listers. Then, when I meet the listers at these county meetings and take up these questions that have been covered by the bulletins, you would be surprised by the lack of unanimity of opinion concerning the judgment of the commissioner of taxes as to what is the law and what is not. But we fight it out to a finish and in that way get some uniformity in the administration of the tax law and uniformity of assessment throughout the state. The listers are called to these meetings by a

summons informal but which carries with it a per diem and expenses. There is no question, absolutely no question, about the value of these meetings and I believe the one way to accomplish the desired result is through education.

MR. C. P. LINK, of Colorado: Just to touch a few of these points raised indiscriminately, I wish to state we are fully convinced that the tax commission is the right idea for a state, that a commission should consist of not less than three members, and probably not more than three members. Three members is about the right number. But the commission should be given full authority over utility corporation assessments, reassessment of local property, and all equalizing power, with abundant machinery for work. And it is one of the most important features that each state should bear in mind that each assessing officer, state as well as local, must be given means and machinery to perform his duties. The commission, if not appointed (and this is also true of local assessors), should be elected for long terms of office. Personally I lean to the appointive theory; but whether appointed or elected the terms of tax commissioners as well as local county assessors should be for long periods of time. The salaries of state commissioners are generally commensurate. Where they are not they should be. Also the salaries of local county assessors should be equivalent to that of any other local county officer. It may be interesting to know that in our state of Colorado, through the recommendation of the tax commission, we have recently adopted a law that places county assessors' salaries right alongside of the best salaries paid in other county work.

This matter of holding state meetings is a very practical matter and one of the best ideas. In Colorado we hold early in the year our annual conference of assessors and tax commissioners. We feel that to follow the annual conference by district meetings of the county assessors in special sections of the state is a splendid idea. These district meetings are attended whenever possible by one or more members of the tax commission. The idea of education and knowledge is really the whole meat in the cocoanut. Where we can get our state and local assessors educated, most of our troubles dis-

appear; and too much stress cannot be laid upon the importance of education and knowledge for all those concerned in state and local work.

The matter of true consideration in deeds is another splendid idea. We drafted and had introduced a law for true consideration, but the real estate speculators, as usual, secured its defeat. A law for true consideration, if it could be brought about, would be one of the best practical steps that could be taken.

Touching briefly upon the question of the unearned increment tax, raised by the secretary of the North Carolina commission, I feel that we should seek a method of getting some of the taxation off property rather than increasing the burden. We feel that the full valuation assessment law is the best law. Rates are increasing so rapidly that adding to that burden should not be considered, because at the present time, for the year 1917, I do not believe that any state in the Union that has a good general property assessment law and full valuation will have less than a one per cent tax. In many states that one per cent is increasing to over two per cent. Last year in Colorado our average general property rate was 1.5 per cent for all counties in the state. This year I feel sure it will come very near being two per cent. Therefore I feel that we should turn our attention to income, inheritance, business, and license taxes to assist in getting some of the burden from property rather than adding to it.

MR. S. G. CRAMP, of Pennsylvania: I would like to ask if any person has had experience in regard to this actual consideration in deeds; how it would be treated in the case of purchase by a railroad company. I am connected with a railroad company and I know we have great difficulty in that respect. We go through farm lands—I have in mind our building through the state of Indiana, where land is assessed at \$60, \$80, or \$100 an acre. We went through there expecting to pay possibly \$250 an acre, and the prices asked for that land ran above \$1,000 an acre. We immediately started condemnation suit, asking for a jury, and the verdicts ran from \$600 up to \$1,500 an acre for that land. After we had

lost about four or five suits we came to the conclusion that we might just as well pay what the people on those juries considered was the value of that land. Of course, in that is damage to the remainder; and in some cases we paid \$600 and up to \$1,000 and over an acre as damages to the remaining land in addition to the actual value of the land acquired.

In making settlement by deed we inserted those full values in the same, but in our department of accounting we tried to differentiate between the value of the land itself and what we paid as damages, and that is always an arbitrary undertaking. We struck those figures arbitrarily in our own department. In one place in Pennsylvania the same thing happened. A farmer asked \$100,000 for 13 acres. He finally came down to \$50,000 and we started suit. We are going to get a big verdict against us. That land is not worth over \$200 an acre, but it happens that it is flat land in the hilly district of Pennsylvania and the man has a big concrete reservoir buried in one corner of the land. The land is all piped and he can spray it any time of the year. We do more damage than the value of the land we take. How could you get at the actual consideration of the land taken in such cases?

CHAIRMAN GARNETT: Virginia has a method of getting at the valuation of property conveyed by what is called a recording fee, based upon the actual consideration paid, and the higher the consideration the higher the recording fee; in that way we have a method fixed by which the consideration may be gotten at any time. Recently the railroads when coming before the public service commission of Virginia had gotten up for one year the actual value of property conveyed and had compared it with the assessed value of each piece of property; the results were quite astonishing in Virginia.

MR. CHARLES A. PLUMLEY: What method do you use in order to determine the recording fee?

CHAIRMAN GARNETT: It is fixed by statute at so much per \$500 or per \$1,000.

MR. CHARLES A. PLUMLEY: Who determines how many times \$500?

CHAIRMAN GARNETT: The clerk; and there are penalties for any misstatement to him.

MR. OSCAR LESER, of Maryland: I think Mr. Cramp's question deserves an answer. My answer would be that as he paid \$50,000 for the farm that would be the consideration in the deed. I think what is bothering him is whether the true consideration measures the true taxable value of that land. It has always been my contention that, if the true consideration were shown in every case, the abnormally high and abnormally low sales would be shown up; and instead of the assessor getting his information informally he would have actual facts to go by and he would very carefully distinguish in a case of that kind, and would not accept the \$50,000 consideration as a true and fair index of value.

MR. T. A. POLLEYS, of Illinois: I have been connected now for nearly fifteen years with the tax departments of two railway companies and during that time I have done a great deal of work, most of it by my own hand but in recent years with the assistance of others, in the way of gathering and using land sales. I am much in sympathy with the suggestion made by the gentleman from Utah and endorsed by others as to the desirability of laws which will require a statement of true consideration in deeds. But I am very much of the opinion that the gentlemen who have not done a great deal of work in the gathering and handling of land sales in the form in which they are now available are perhaps overestimating the errors that come in from the use of the data from the deeds as they go upon the records now. I sat still a moderate length of time over this, hoping that Mr. Haugen, of Wisconsin, or Mr. James, formerly of Wisconsin, or Mr. Lord or Mr. Armson, from the Minnesota Tax Commission, might get up and say something concerning this subject based upon their large knowledge. The tax commissions of those two states and of Michigan have done a great deal of work in the way of gathering and using land

sales. I am very familiar with the work of the Wisconsin and Minnesota tax commissions and of course much more so with what has been done along this line by our own company.

I hope you will get your proposed law; I hope various states and many states will be able to get that sort of law, because then everybody will feel that he has the right kind of information upon which to reach conclusions as to what is the true ratio between the assessed value and the selling value of real estate. I, therefore, would be very glad to see that sort of law passed. But when once it is passed and you begin working out results based upon the information which will then be set forth in the deeds, you will find that you are going to arrive at general results that are very, very close to what you get now, based upon the information that you can draw off from the records now available, if you exercise ordinary common sense and prudence in the scrutiny and correction of your data as you go along.

The errors that are undoubtedly involved in drawing off land sales information from the warranty deeds as they now appear upon the records are very largely compensating or offsetting errors, and they cancel one another to a very great extent. If you have exercised ordinary judgment as you go along in gathering the data you will come out with an approximately correct ratio, based on the information in the form in which it is now available in the recorded warranty deeds in the different counties of the Middle West. I will not seek to speak for sections of the country of which I know nothing, but in the nine states of the Middle West traversed by the lines of the North Western Railway Company I am quite sure that you will come out with ratios and results, based upon information you can now get, which are very close to the ratios and results you will get from the more perfect information available if the laws now advocated were enacted in those states. In this view I believe I will be supported by the tax commissions of Wisconsin and Minnesota and by Dr. T. S. Adams and Mr. A. E. James, formerly connected with the Wisconsin Tax Commission.

A point was made with reference to the use of the federal stamp tax upon conveyances which will go into effect Decem-

ber 1. We gather this land sales and assessment information in a good many counties along our line and it is not so formidable a task as you might think. We do it with a small force and for a considerable area and take care of a great deal of other work in connection with it. It is not so tremendous a task as people are disposed to think who have not tackled it and stuck by it. I want to say that I have said repeatedly to the men associated with me in gathering this information for the North Western Railway Company that we are surely going to have a largely increased amount of information available after December 1 by reason of the stamp act. I am glad the stamp act comes into effect again. It is an excellent basis of information. People will hocus-pocus this matter occasionally, of course, just as they do all sorts of things. They are willing to pay a little higher stamp tax at times, perhaps, for the supposed advantage of misstating the consideration. It is true that will be done. But what is the object of stating a fictitious consideration? When I find people objecting to the use of land sales ordinarily I find that most of them have in mind deeds containing padded considerations.

What is the object of over-stating the consideration? It used to be referred to by Mr. Haugen as the upbuilding of the "sucker" industry in northern Wisconsin. The object is to deceive somebody. If you are going to deceive anybody worth while deceiving you have to lie discreetly after all. You have to stay somewhere near the real truth. I have made this statement a number of times and every time I have made it I have thought I believed it more nearly: that, after all, if you got nothing from the deeds but padded considerations to base your results upon, I doubt very much whether you could get a result more than 20 per cent wrong, because if you get more than that far off from the truth in your statement of the consideration in the deed, you cannot catch a sucker very easily.

Again, in deeds between a couple of traders you find them mutually over-estimating the value of their land, and over-estimating it stiffly. But if they state the value of their land at twice its actual worth, I am probably going to catch them when I post the assessment beside the stated sale price of the parcels. You do not usually post more than a dozen parcels in

any community as to both sale price and assessment before you arrive at a fairly accurate general conclusion as to the assessment ratio prevailing in the community. We will say the ratio thus indicated is 50 per cent. Along comes this supposed transaction between two traders and it sticks up like a sore thumb. The stated consideration is four times rather than about two times the assessed value of the parcel in question. I have quite frequently struck out such transfers without any further investigation, because they were apparently abnormal. I think that is the sensible thing to do.

The new federal stamp law going into effect will, in my judgment, supply a greatly increased amount of information. The information given by the stamps on conveyances is just what the real estate editors on the big city papers which maintain a real estate page mean when they refer to the "indicated consideration". The ordinary conveyance recites the amount of unpaid incumbrance, if any. That amount plus your stamp, converted into dollars of consideration passing to the grantor, is a pretty accurate basis to act upon. My observation has been that the information based directly upon the stamps and the recitals as to incumbrances checks out very well on the average with the consideration actually paid for property.

One other thought: I take it that all of us present at these gatherings wish that the time were more nearly at hand when local assessors could be placed under a more centralized control. I think it would be a splendid thing if the local assessors could be appointed for a considerable length of time at fitting salaries and supervised by central authorities, like the permanent tax commissions in the various states. But I think you will all agree that that is a long way off. This country is not going to abandon the home rule idea just because the contrary plan is a good thing. But I wish to throw out this suggestion: I believe there is an intermediate ground that might perhaps be taken. I think possibly in states like Wisconsin, where the adoption of such a law, as I understand it, might not be constitutional on the ground of home rule — in states like that, where they have that objection to work against, is it an impossibility to draft a statute which shall be optional with the counties? There are counties and counties within states.

Some are progressive and some are the reverse. If you could once get a law properly drafted which would leave it optional with the counties by a vote of their own electorate (therefore providing for the exercise of the prerogative of home rule) to place themselves, until they voted otherwise, under the terms of a law which would turn over to the permanent tax commission in that state the appointment and control of local assessors, you might get half a dozen counties going on this thing; and if it worked as well as we think and hope it would work, it might be a good experimental station for the development of the idea more widely thereafter.

MR. NILS P. HAUGEN, of Wisconsin: The tax commission of Wisconsin recommended to the last legislature the abandonment of the town assessor's office and placing the assessment of property in the hands of a county assessor. We have the difficulty of a home rule provision in our constitution, and it is perhaps doubtful whether a law of the character suggested by Mr. Polleys would stand the test. The tax commission in order to meet that difficulty suggested to the legislature that the election of the county assessor be placed in the hands of the county board, which is a body consisting of the chairman of each rural town, a member from each ward in the city, and the president of each village, making quite a little legislative body called the county board. The constitutional provision is to the effect, as construed by the court, that any elective office that was in existence at the time of the adoption of the constitution must be left in the hands of the local electors. The office may be appointive, but if made appointive the appointment must be made by a body chosen by the electors.

We tried to overcome the difficulty of the home rule provision by placing the election or appointment in the hands of the county board. We also suggested that the candidates for the position of county assessor before the county board should be selected under civil service rules. That I think is very essential in a matter of this kind. The office would then be removed from political influence. We have had very good results in selecting our assessors of incomes under civil service rules. They are appointed by the tax commission — but that

office, of course, was not in existence at the time of the adoption of the constitution, so that the home rule provision does not apply. We ascribe to a great extent the success of our income tax law in Wisconsin to the fact that these men are selected under civil service rules. We have on our force as income tax assessors men representing all political parties and all shades of the different political parties in the state of Wisconsin.

I believe that we would have far better assessments if we could have county assessors rather than local assessors elected as at present. Our assessors are poorly paid; they are inexperienced and frequently, too, they labor under the impression still existing to some extent in many of the districts of the state that a low assessment is going to save their district from an undue share of state and county taxes.

I want to refer to another matter which Mr. Polleys commented on and which was brought up here by another gentleman; and that is to the use we make of sales. We took up that matter when we first became the state board of assessment, back in 1901, and have continued since that time to use the sales to verify or to judge of the assessments in the different assessment districts of the state. We compare the sales value of the property sold in the assessment district with the assessed value of the same property. In order not to be led too far astray by sales, where the true consideration is not stated in the deed we sent agents into the field to verify the considerations. That involves some expense but not such great expense as you may imagine. That was so until after the income tax law took effect and we appointed assessors of incomes.

We have 41 assessors of income in the state, the state being divided into 41 districts. The last few years we have turned that work over to the assessors of income. They are men familiar with the communities, they are on the ground, they can easily verify considerations; they frequently know the parties to the transaction; and they have been able to report to us the true consideration when a nominal consideration was stated in the conveyance, and in that respect I think we have arrived at very fair and true results. The tax commission of Minnesota, as I understand from Mr. Lord, sends its

agents into the field to get at the true consideration in these transactions. While we may include some erroneous sales, after all that is offset by compensating errors, as Mr. Polleys suggested.

I want to add this in regard to the use of sales. We have eliminated all transactions between relatives to start with, we have eliminated all forced sales. We would not use any sale where a railroad was trying to build through a community and had to pay not only for the property which it takes as right of way but also for the injury which results to the remainder of the premises. We would not consider that a nominal sale. And so we would avoid the difficulty that I understand the gentleman from Louisiana had. We try to get at the true consideration, and when you find year after year in a small assessment district, such as we have in Wisconsin, consisting of a township, that there is a constant and gradual but very uniform advance, comparing these sales with the assessment of the property sold, it is pretty good evidence that the sales that we use are reliable.

MR. L. W. DONLEY, of Canada: In Canada the assessors are appointed and many of them remain in office for long terms. This system has possibly the advantage of allowing the assessor to become thoroughly acquainted with the property in his district and, therefore, in a better position to assess the same more correctly than he would otherwise be if only holding office for a short term.

In many of the smaller municipalities, where the assessor's services are not required throughout the whole year, the assessor is appointed temporarily to make the assessment for the year. It is here where the difficulty comes in, so far as I can see, in arriving at a proper assessment, unless it so happens that a competent man is appointed to make the assessment. The qualifications of a competent assessor, after all, I think depend on what the delegate from New York state says, namely, "education". I am of the opinion that the assessor should be the most efficient valuator in the district, he should be a man who is able to state what the property is really worth, and thoroughly qualified in all matters pertaining to

assessment. It is absolutely necessary that municipalities recognize this fact and that salaries sufficiently high be paid to secure and retain such men. This would materially assist in producing better assessments and prevent many of the discrepancies which are liable to occur.

CHAIRMAN GARNETT: The Anglo-Saxon has imbedded in him a strong sense of the idea of self-government, and he parts with any local power with a great deal of reluctance. It seems to me a part of the trouble with our tax system is that we have failed to make the people realize that for state purposes the unit is the state and not the municipality or county. Mr. Milling said in his paper that in Louisiana there were different assessments for local purposes and for state purposes. I believe that under the constitution of Virginia that would be impossible at present. But it is a question we might discuss with some value to us now.

MR. J. F. ZOLLER, of New York: I just want to say a few words as representing taxpayers. We have heard extensively this morning from those gentlemen whose duty it is to collect taxes. Of course, we desire always to hear from those gentlemen because their duties are such that they are able to add materially to the success of a convention of this kind. However, the taxpayers themselves have taxation problems to consider and I was much interested in the statement that we ought to have full value in assessments. I believe in that sort of thing. I do not believe that you can get away from full value and get equitable assessments in all cases. It is one thing to desire full value, but it is quite another thing to be able to get full value under the tax laws as they exist at the present time. For example, I do not believe it would be possible in New York. I only refer to New York because I happen to come from that state, and my reference to that state is merely by way of illustration; I assume that what is true of the state of New York is true of other states under similar conditions. I do not believe it would be possible in New York to assess personal property at full value if the attempt were made to tax it at the rate which generally prevails in that state against

real estate. Therefore, in order to get personal property assessed at full value, probably the first thing we would have to do in any state would be either to classify personal property and tax it at a reasonable rate or else substitute perhaps an income tax in lieu of any tax upon that kind of property.

I have been very much interested in the activities of the tax commissioners of the state of New York. They have been very active, and their activities, of course, have come to my attention in more ways than one. But we must remember that in New York the assessors are elected. The tax commission has started out to do its duty under the law, which requires full valuation, and it has notified the assessors very properly what the law requires. I think, however, that if the assessors try to follow that advice (I believe they are attempting to follow it in some localities) the result will naturally be, under our laws, a discrimination against corporate property.

I say this for the reason that a corporation as such does not vote nor does it control the votes of its employees. With the labor situation as it is I do not believe that anybody would say that a corporation would undertake to control the votes of its employees on any matter, and I think that this is as it should be. I do not believe any corporate body should ever undertake as a part of its function to control the votes of any citizen. The corporation, then, has no voting power, and when this advice comes from the tax commission to the assessor who is elected and he is told that in his particular locality the total assessment is so much and it ought to be so much more, he looks around to see how he can best carry out the recommendations from the tax commission and at the same time be elected at the next election. It is natural for him to put the assessment upon the corporate property because the corporation cannot vote him out of office at the next election. If he puts the valuation upon individual property, individuals can vote him out of office at the next election, so what will the assessor do as long as he is an elected official?

The tax commission is not responsible for that situation. It is enforcing the law as it finds it. But, on the other hand, if the tax assessor were appointed and he knew he could say at the end of his term that he did his duty, assessed all property

regardless of the character of the owner, which is the proper way to assess property, we might get equitable assessments at full value. It does not make any difference who owns property, whether the owner be a corporation, partnership, or individual, it ought to be assessed as property at full value and the character of the owner ought not to make any difference.

There is another thing I want to call to your attention. I was much impressed by the statement from one of our tax commissioners that he believed the thing to do when the assessment went up was to stop expenditures. I agree with that and I wish there were some way to carry that into effect. If there ever was a time when state, city, and local expenditures ought to be held down to a minimum, it is at this time when the federal government is coming along and taking all the extra money of taxpayers for the support of the federal government. This is the time when a particular effort should be made to keep down expenditures, but it is one thing to advocate it and another thing to do it. In the state of New York we have a system, and that system has been advocated here indirectly, and I think unfortunately, by representatives of other states. That system is separation of state and local revenues. I would like to have anybody tell me how you can expect to keep down expenses under a system of separation of state and local revenues.

What I mean by separation of state and local revenues is this: where the state says it will take certain sources, perhaps the inheritance tax, perhaps a franchise tax of some kind, perhaps a business tax or a license tax, and use the revenue exclusively for state purposes. The locality then cannot tax that source for local purposes. All the money the state gets, be it little or much, is used for the purpose of maintaining the state government. If the state adopts a law of that kind and fixes the rate low or high, assuming that it will get, say, \$5,000,000 from that source, it may get \$10,000,000 or \$15,000,000 instead of \$5,000,000. Anyway, you can be sure that the state will spend all that revenue regardless of the amount of it. There is no individual taxpayer who has voting power who cares anything about whether or not that revenue is spent, because his taxes are not directly increased by the increased

expenditure. I believe it very important, insofar as it is practical, to do away with any idea of the separation of state and local revenues. Have the revenue all collected, if you please, by a state board, but do not attempt to separate it. Probably the state tax commission is more competent to collect it; at least it ought to be collected under the jurisdiction of state authority. Have this revenue sent back to the locality and then every time the expenditures of the state are increased the taxes of every individual taxpayer of the state will be increased. He will then take some interest in knowing whether the state government is spending more or less than it should.

MR. THOMAS W. PAGE, of Virginia: I understood this meeting was to be devoted to points brought up in the papers dealing with southern problems. As yet we have not heard from a single man from the South and I regard it, gentlemen, as a very pleasant characteristic of southern modesty that they have kept so quiet for so long. There are one or two things I had hoped would be brought up this morning that are rather peculiar to the South, in one of which I am very much interested and which I should have been very glad to hear discussed. That is the matter of so-called license or occupation or business taxes. They have been rather peculiar in the southern tax systems thus far. It would have been very helpful to us in the South if the discussion had taken the direction of talking about some of these things peculiar down here. If it is possible I should like to have a few remarks on the subject from the gentlemen present. In order to start that I want to tell you what the license system so-called is in Virginia, as a concrete illustration of where this thing needs discussion.

In Virginia we have licenses on pretty much all occupations. There are some exceptions. To tell you what those licenses mean, I am going to take one particular occupation for illustration, and that is the tax on merchants. In Virginia every merchant has to get out what we call a license. His annual license is based upon his purchases. There is a minimum tax of \$5.00; on the first \$1,000 of purchases he pays \$5.00, on the second \$1,000 of purchases he pays an additional \$5.00, on every \$1,000 of purchases beyond that he pays \$2.00 per

\$1,000, up to \$100,000, and then the tax is reduced to \$1.00 per \$1,000. That is because the legislature has not seen fit to discriminate between wholesale and retail merchants. This state license tax is in lieu of a property tax; it is the only tax the merchants pay to the state, so that if a merchant is doing business on, say, \$100,000 of capital he pays no property tax to the state at all. Instead of that he pays this so-called license tax upon his purchases. It yields a very large amount of revenue; I believe about one-fifteenth of our Virginia revenue comes from these so-called licenses. The liquor licenses will not play much part in Virginia as the state has now gone dry.

I should like to have some little discussion in this very important body as to that method of getting at merchants for taxation. I do not believe that a property tax can be levied upon merchants that will be just as among the merchants themselves. These assessments of property are usually made as of a certain date. The stock in trade of merchants is the subject of seasonal fluctuations. Whatever date you fix, therefore, for your assessment will hit some merchants much harder than it will others. Is there any better way, any other means of getting the taxes that merchants ought to pay, than by this so-called license, which is, I repeat, in lieu of a property tax in Virginia? Or can you give us some suggestions that will be helpful to us that will be better than this license system? I ask that in order to steer the discussion just a little bit into our peculiar sectional needs down south here.

MR. W. H. KNAPP: Is that tax administered centrally, that license tax on merchants?

CHAIRMAN GARNETT: It is administered just as other taxes are. The commissioner of revenue makes the assessment of all tangible personal property and at the same time he assesses the license tax upon the list of monthly purchases which the merchant is required to keep.

MR. THOMAS W. PAGE: The merchants' books are open to the commissioner of revenue and he is the man who assesses

everything except real estate in Virginia. In Virginia we have a very complicated assessment and reassessment. It would rather confuse the issue to tell you just exactly how we do it. I may say the tax has not been properly administered and that more than half the merchants in Virginia have been getting out on this minimum fee of \$5.00; that is, more than half the merchants in Virginia do not buy more than \$1,000 worth of goods. That shows how well the tax is administered, but it can be administered. I am sure the administrative features of it can be satisfactorily settled, but what about this as a substitute for the property tax on merchants? That brings up the whole subject of occupation taxes, and it is a big question. It is one of the phases of business taxes that requires some discussion. It has not been discussed in this association for a number of years. There were some papers read in 1911, at Richmond, in which we had a description of they way they were taxing merchants in Canada, floor space and that sort of thing.

MR. FRANK ROBERSON, of Mississippi: The gentleman who has just preceded me has suggested a matter that the committee of which I am a member has had up, the question of license taxes, but I do not know that I understand exactly the way in which he uses the term "license tax". In Mississippi we use the terms license tax and privilege tax interchangeably. Mississippi is known as the worst state in the Union on privilege taxes. We tax with a privilege way everything you can suggest—every avocation, and every trade, and almost every article sold. I shall not attempt to detail them.

I remember getting a letter the other day from a druggist, and he surely had a righteous complaint. He pays a merchant's ad valorem tax. He also pays an annual license tax as a merchant. In addition to that, if he sells tobacco and cigars he pays another privilege license; if he happens to have a soda fountain he pays another privilege license; if he happens to sell coca-cola at that fountain he pays another privilege license; if he sells coca-cola in bottles instead of from the fountain he pays another price.

In Mississippi the privilege tax proposition is a stench in

the nostrils of everybody. The special legislative committee on taxation and revenue unanimously agreed on the proposition that privilege taxes ought to be absolutely abolished except where the payment of the tax conferred some substantial benefit on the taxpayer. In my judgment privilege taxes are absolutely pernicious in theory. There is more complaint about the privilege tax in my state than all other things combined. The state revenue agent who has to do with the back assessment for taxes in Mississippi has 10 times more trouble with the collection of privilege taxes than with everything else. It is the unanimous opinion of that committee that the privilege tax should be practically abolished just as rapidly as other sources of revenue can be established. You cannot do it all at once. Mississippi gets \$500,000 from privilege taxes.

This committee also has recommended to the legislature that a law be passed requiring deeds and conveyances to show the true consideration, which I have no doubt will pass our legislature.

We have another thing which is troublesome, and we cannot figure out what is to be done; but you seem to have the same trouble elsewhere. That is the assessors. We have in Mississippi only county assessors. We have a state board of equalization called the state board of tax commissioners. The assessment for state purposes is made by the county assessor. This county assessor is elected. I have heard a good deal said here today about education in this matter. I agree with that largely, but that is not altogether the trouble. We have a great many county assessors in Mississippi. You can convince their minds—they know what ought to be done—but that is an entirely different proposition from getting the elected assessor to go ahead and do the thing you convince him should be done. We have this kind of proposition up now about which we are undecided, and I would like to know if any of the states have tried this solution of the assessor problem. We discussed making county assessors appointive. Personally I think with favor of it yet.

I realize, however, that there is a great deal to be said on the other side. Whenever you let the tax commission appoint

the county assessor you deprive the local community of every bit of control over taxation. That is a thing not altogether to be desired, because the power to tax is the biggest thing in government and carries with it the power to destroy. Even if, abstractly, you ought to appoint them—I know in Mississippi there is no chance, I dare say within my lifetime, of getting that done—is there any other way to get at the same result? If you have an assessor you can demonstrate to him what the law is, but he thinks that if he enforces it that way the people back home will not vote for him.

We took this proposition up in our taxation committee and we have not determined whether or not this is a solution. The tax assessor and county assessor are paid by the state. We might have some trouble with our constitution if we were to appoint them. This possible solution I would like to hear discussed. The salary is fixed by the state. We have now the proposition of making the salary a sliding scale, the exact amount of each salary to be determined by the state tax commission after the assessment work is completed. If the assessor knows that his salary is going to be determined by the state tax commission in accordance with the kind of work he has done, we are somewhat of the opinion that you might get a better result, along with the educational work you are going to do with them, because you are touching the pocket-book. That can be done in any state, as I understand it, because the salary proposition is usually divorced from constitutional requirements.

As to income and expenditures of a state, it is the same situation that applies to the individual case. A state is nothing but a collection of individuals. In Mississippi, and I think that is true in Alabama and a number of the southern states, we buy everything on credit, such as Ford automobiles, lightning rods, cook stoves, etc., and then pay for them in instalments. If you can put a man on a cash basis—in other words, if he has to pay cash for everything he buys—he is not going to spend half as much as if he bought on credit. What is very true as to the individual is true as to the state. Whenever you pay cash at the end of the year you will have spent less than before. This committee has recommended to the

legislature in Mississippi, which meets in January, 1918, a law of this kind. After a certain length of time to give the law a chance to get in operation, it will absolutely prohibit the issuance of any warrant unless there is money in the treasury with which to pay that warrant, and make it a crime, if necessary, for any officer to issue the warrant without the necessary funds to cover it. Our solution is to pass a law that prohibits the issuance of the warrant, and that makes it necessary to provide the cash at the time the appropriation is made. We believe the placing of the state on a cash basis like an individual will largely take care of the expenditures on the part of the state.

FOURTH SESSION

WEDNESDAY AFTERNOON, NOVEMBER 14, 1917

CHAIRMAN—SAMUEL LORD, MINNESOTA

1. ONE YEAR'S EXPERIENCE WITH THE MASSACHUSETTS INCOME TAX

Henry H. Bond, Income Tax Deputy, Department of the Tax Commissioner, Boston, Massachusetts

2. THE POSSIBILITY OF THE RESTRICTIVE APPLICATION OF THE INCOME TAX PRINCIPLES TO A MUNICIPAL BUSINESS TAX

L. W. Donley, Assessment Commissioner, Winnipeg, Manitoba, Canada

3. REPORT OF THE COMMITTEE ON PUBLIC EXPENDITURES

Herbert J. Hagerman, President New Mexico Taxpayers' Association, Roswell, New Mexico

4. TAXATION OF MERCHANTS' AND MANUFACTURERS' STOCK

Edmund H. Bodden, Tax Commissioner, Milwaukee, Wisconsin

5. DISCUSSION

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MASSACHUSETTS' FIRST YEAR OF THE STATE INCOME TAX

HENRY H. BOND

Income Tax Deputy, Department of the Tax Commissioner,
Boston, Massachusetts

Massachusetts is completing its first year of experience under the income tax law enacted in 1916. It has been thought by the officers of this association that it might be advantageous to have presented at this time such general lessons as this limited experience may suggest along the line of income taxation and the administration of such an act, probably in view of the fact that various other states are adopting income tax legislation and others may have such measures under consideration. Therefore, with much hesitancy I submit the following as tentative conclusions, reserving the right, if I may, to modify them each and all at subsequent meetings of the association and propounding them, not in a dogmatic spirit, but rather in the hope that this statement may provoke a healthy discussion of the principles involved.

THE PROBLEM

In order that you may have the significance of the results in Massachusetts more clearly presented, let me outline briefly the act itself. The Massachusetts law does not provide for a general income tax but a partial or classified one. Enacted primarily as a measure of relief from the tax upon the capital value of intangible property at the high and varying rates, which have averaged about \$19 for the whole commonwealth, it provides a tax of six per cent on the income from such property with no exemption except in the case of persons whose income from all sources is under \$600. You will note that a six per cent tax upon income is practically equivalent to a three-mill tax upon capital value. With this, the principal part of the act, was included the tax upon the income in excess of \$2,000 from profession, trade, employment, or busi-

ness, which tax, as a survival of the colonial "faculty" tax, had been upon the statute books in varying forms throughout the intervening years but had become little more than a tax in theory, yielding but little revenue, enforced against few taxable persons and against them at the varying local rates. In this ancient tax a uniform rate of 1.5 per cent was now substituted, and the tax clarified by definitions. Similarly, the tax upon annuities, which had also been in theory taxed for many years at the local rates, was now fixed at a rate of 1.5 per cent, and to these three taxes was added a final measure of taxation entirely new in our commonwealth, a tax of three per cent on the excess of gains over losses from dealings in intangible personal property — a tax applicable to the broker, bond house, investor, speculator, and all other persons who buy and sell securities even casually.

We have, then, under our new act four distinct kinds of income subject to taxation and returned in separate schedules for taxation at three differing rates. You will note that from these taxes are omitted the income from real estate, interest from real estate mortgages not in excess of the local assessment on the realty, and dividends from Massachusetts corporations—the real estate being taxable locally as in the past and the Massachusetts corporations continuing to pay upon the value of their franchise. It was primarily the necessity for continuing this latter tax and the tax upon real estate, coupled with an unwillingness to impose a tax upon both real estate and its income, that prevented the enactment of a more general tax in Massachusetts — a goal to which we steadily look forward, however, and to which the pending legislative investigation of the revision of our corporate franchise tax may possibly take us nearer.

While our act has a higher exemption from business income than the new federal income tax, exempting \$2,000 of such business income with an additional amount up to \$3,000 for the taxpayer's wife and children, nevertheless, our tax upon dealings in intangibles having no exemption, and our taxes upon interest, dividends, and annuities only providing for small exemptions in the case of persons whose income from all sources is under \$600, we reach in this way a larger class of

people and a rather different class, thereby increasing proportionately our administrative problems.

We have an administration centralized under the tax commissioner, headed by the income tax deputy, and under him the necessary assessors and deputy assessors, an organization of approximately 55 men giving their entire time to this work. They are appointed by the tax commissioner with the approval of the governor and the council, not from a civil service list, and form a distinct taxing body extending throughout the state, with a central office in the state house and 10 branch offices elsewhere in the principal cities of the commonwealth. To this organization the compulsory returns of income are annually made before the first of March in each year, the contents of these returns being safeguarded in every way from disclosure. The tax is assessed before September 1 and bills are payable before October 15. We have certain reasonable provisions for information-at-the-source from employers, corporations, and others, as to salaries, interest, and dividends paid to stockholders and, in the case of corporations, lists of their stockholders, this method of information being adopted in preference to collection-at-the-source.

The act provides for the taxation of all fiduciaries on the basis of the income accruing to Massachusetts beneficiaries, and similarly taxes partnerships as such for such income as accrues for Massachusetts partners. We do not tax corporations under our act.

Such, then, in brief is our Massachusetts act, designed primarily as a remedy for the unendurable tax on the capital value of intangible property at the high and varying local rates and built upon this foundation into a fairly complete income tax, at least so complete as to make its administration fully as difficult as a more general act would be and rendering the conclusions reached in our short experience perhaps of some general value to other states.

OPERATION OF THE LAW

We have received approximately 190,000 returns, which will be increased to over 200,000 before the work of the year is completed. The assessment of taxes amounts to approximately

\$12,000,000, of which 94 per cent was paid before the date for the addition of interest. We have received approximately 20,000 returns of information-at-the-source, each return being a list of probable taxpayers. Approximately 10,000 returns have been investigated by one method or another during the year. But three cases have been taken to the courts to date, and upon the cases involving vital questions in the law decisions favorable to the commonwealth have already been rendered. Mail in excess of 1,000,000 pieces will have been handled by the conclusion of the year.

Perhaps the primary test of an income tax is its ability to produce the expected or necessary revenue, although failure to do this might indicate nothing more than the necessity to change the rate of tax imposed. Tested in this way, our act must be considered a success. We have assessed a total tax of approximately \$12,000,000, the assessment not yet being complete; this amount is subject, however, to some abatements. If we compare this yield with the yield of the tax upon intangibles at their capital value, we are convinced that the new law yields something in excess of the old. To show this in definite figures is somewhat difficult, because under the previous local taxation this class of property was not assessed separately, and our best guide to the amount thus assessed is the decrease in the total personal property assessed by the various cities and towns after the income tax had taken from their jurisdiction the taxation of intangible property.

Tested in this way, we find a local decrease in taxes amounting to \$8,120,621, which may roughly be said to represent the yield of intangibles under the old system, subject to some allowance for a greater disclosure of tangible property during the past year. If, then, this represents approximately the yield of the old tax on capital value, we find the new act, which includes the old taxes on business income and annuities and the new tax on dealings in intangibles, yields almost \$4,000,000 in excess of this amount. It is, therefore, fair to say that the new law has yielded something in excess of the old, although its rate has been reduced to about one-seventh of the former tax on capital value. More exact figures will be available when our statistics are completed.

If, however, we are to test the law by its popularity, we are again justified in claiming its success. In spite of the fact that a compulsory return has been imposed upon a large number of taxpayers, they in the main accept its provisions with a feeling of relief, and it is inconceivable to most of us that Massachusetts should ever return to the old system of taxation. Tested by its workableness, our act again is equally successful. Carefully drafted by a recess commission of members of the legislature and experts, the various problems involved had been given adequate attention in advance, and the solution found for most of the difficulties which have been met in practice. If we test the law by its reaching effectively those persons who have the ability to pay, here again it must be deemed a success. While no detailed statistics are yet available, a hasty examination of some of the substantial taxpayers shows conclusively that these persons pay larger taxes under the present act than under the tax upon capital value, in spite of the lowering of rates. But a small part of the tax comes from the laboring portion of the community.

While it is true that certain perfecting amendments to the act are necessary, nevertheless the vital principles set forth have been thoroughly tested and sustained as being legal, practicable, and equitable.

DEDUCTIONS FROM OUR YEAR'S EXPERIENCE

From this short experience, I should like to make certain suggestions to states that are considering income tax legislation, if I can be assured that my attempt to do this is without the appearance of being dogmatic. Trusting that these statements will be examined in this spirit, let me suggest the following as being somewhat vital in the preparation of an income tax and the drafting of its provisions.

First and foremost, simplicity in the act itself should be sought, even at the sacrifice of otherwise valuable details. An act intended for popular application should be in popular form so far as possible, and its demands and methods cannot attain complete success unless they are as simple as possible. Second, a certain elasticity of method should be provided throughout the act. Stringent provisions coupled with ad-

ministrative discretion, provisions for interpretation by rulings and regulations issued by the administrative power; and, in general, such elasticity as will permit the administration to conform to actual business conditions rather than follow unswervingly in one channel, are all essential.

The act itself should be strictly adapted to local conditions, and should seek to remedy those conditions, imposing such rate of tax as will yield only a proper amount of revenue. The act should be co-ordinated with other taxation laws of the state, so that their effectiveness may be increased by the operation of the income tax itself; and, indeed, this transition to an income tax may profitably be used to correct many of the minor deficiencies in other parts of the taxation system of the state. Careful provisions for alternative taxation upon the basis of receipts or of accruals, upon either calendar or fiscal years, and for adequate penalties for fraudulent or incorrect returns should also be included. We have found the penalty of a double tax for fraud extremely effective and far more workable than criminal proceedings.

While it is undoubtedly preferable to adopt the principle of information-at-the-source as a check upon the returns filed rather than collection-at-the-source, nevertheless this provision should not call for an excessive amount of information, since the handling of this upon too large a scale will either involve the administration in an expense disproportionate to the result or subject it to the criticism of requiring these reports of information and allowing them to accumulate undigested and, therefore, valueless.

While, however, these general features may be and in my opinion should be incorporated in any income tax legislation, it should be apparent that no state can to its best advantage adopt verbatim, or in anything approaching its original form, the legislation of another state along these lines, as in each instance the legislation should be closely adapted to the varying local conditions encountered. If, however, we assume that such an act has been carefully drafted with expert assistance and enacted, I would submit the following considerations as possibly being of assistance in the matter of administration.

In the first place, it is of the utmost importance that politics

be kept absolutely out of the administration of the law. I do not mean to imply by this that recourse to a civil service examination for appointments is necessary or advisable, for I feel that it is not and believe that our Massachusetts experience has shown the wisdom of having these appointments made by the tax commissioner, subject to the approval of the governor and council. The administration of a state income tax should be centralized to be properly effective. The delegation of authority without close supervision should be avoided, although at the same time this organization will necessarily be somewhat scattered throughout the area to be covered, and should be accustomed to act upon individual initiative where necessary. The organization selected in this way should be carefully trained for the performance of its duties well in advance of the actual operation of the law, so that so far as possible the period of transition may be made easier for the taxpayer by the proficiency of those selected to assist him.

The task of informing a large proportion of a state of the requirements of new legislation involving a new and compulsory return of income is large and calls for using all available agencies to this end. Newspaper publicity, the publication of popular pamphlets, the use of show cards in stores, posters, etc., the assistance of paid or unpaid lecturers speaking before clubs, church organizations, chambers of commerce, and similar bodies, the enlisting of these organizations in reaching their members—all these are methods that have proved to be of the greatest value in our commonwealth and are, I believe, necessary under such conditions in any state. Especially is it valuable to enlist the co-operation of banks, trust companies, and attorneys so that their assistance will be rendered along lines that are in harmony with the purposes of the administrative power. The administration should further be linked with local agencies such as local boards of assessors, city and town clerks, and public libraries, both for publicity purposes and also to secure local co-operation in every branch of the work.

The forms for returns should be prepared well in advance and thoroughly tested out before final distribution. It seemed to us wise to place these forms for distribution at a large

number of local points rather than attempt to mail to a list of taxpayers that would at that time have been necessarily incomplete and, while we are for the second year reversing our plan and intend to mail blank forms to taxpayers who have filed the preceding year, I do not feel that the wisdom of our first year method can properly be questioned.

Beyond these preliminary matters lie other points deserving of mention, such as the importance of thorough work in the first year of the tax. An ineffective administration, namely, one that does not succeed in reaching substantially 100 per cent of the taxable persons of the state, has, in my judgment, started an influence at work which may easily result in the repeal of the law itself unless the tendency is properly checked. The discovery, therefore, of delinquents, both those who have failed to make return of income from a misunderstanding of the extent of the law and that far smaller class of intentional evaders, should be sought most industriously and in every way possible. The prompt decision of questions involving meritorious points of law should be facilitated so that all questions testing the constitutionality of the act and its broader aspects may be adjudicated as early as possible.

Finally, the year's work should include the preparation of adequate statistics along geographical and occupational lines so that not only the people of the state may be properly informed of the details of the tax and its assessment and the organization itself assisted in locating groups and delinquents thereby, but the basis may be established for such changes in rates, amounts of exemptions, and other details of the act as experience may show to be necessary.

CONCLUSION

We have certain serious problems still to face in Massachusetts, notably the question of distribution. Temporarily this is based on the deficiency in the personal property tax after the removal of intangibles for this income method of taxation, the surplus thereafter going to the cities and towns in the same proportion as the burden of the state tax and being in effect a credit thereon, the state reserving only the cost of administration. But this must give way to a permanent method,

✓ and one which I hope will be based upon the idea of a sinking fund, into which the surplus of a prosperous year may be carried, to be appropriated when the lean year comes, thereby relieving real estate in such years and equalizing the tax on real estate in all years; an idea advanced by one of our experts. We have also the problem of extending the income tax principle to corporations, and to this end a legislative committee is now in session, and tentative plans therefor are under discussion.

I have not attempted a detailed analysis of our act or a justification of its theories. That we have made substantial progress along sound lines we believe to be established. Nor will I minimize the difficulties of administration, which are very large indeed and involve the necessity for a large and expert force at considerable expense. Unless a state is willing to expend liberally to secure these results, she had far better avoid income taxation. In conclusion, I may summarize the results in Massachusetts by saying that the state has by this new legislation corrected what was perhaps the greatest defect in its taxation scheme by a law that has been generally accepted as equitable, workable, and adequately effective from a revenue standpoint.

We are able to administer this law at a relatively low expense. The expenditure for administration in the first year will amount approximately to \$300,000. If the final yield of the tax for 1917 is taken at \$12,100,000, which figure seems to be a fair one, we have a gross expense of 2.48 per cent. This figure fails, however, to allow for the fact that out of this appropriation we have furnished 10 district offices, bought a large equipment of machinery, and spent considerable sums on publicity work that would not have to be repeated another year. These have been estimated to have cost in excess of \$40,000. If to these deductions we add the further one of interest upon collections while in our possession and the value of these funds to the state treasurer from the time of remittance to him to the date of disbursement to the various cities and towns—a total amount of \$27,000—we have then a net cost of only \$233,000 to collect \$12,100,000, or a cost of 1.92 per cent.

May I point out the great value of income tax statistics in times such as these, and to a lesser degree in normal times, in disclosing through carefully prepared statistics those lines of industry which are making unconscionable profits? Many lines of business made in 1916 a percentage of profit upon the invested capital that was not warranted by business conditions and certainly not in war times. A complete set of income tax statistics would enable the people to detect these high margins of profit on the staple necessities of life, and we might reasonably hope for such legislative and administrative restrictions as would restrain what is often exorbitant greed on the part of those with whom we are forced to deal. Publicity itself is an effective weapon.

Whether any of the suggestions that have been advanced be sound, nevertheless our experience has undoubtedly shown certain things: that the vast majority of taxpayers will make honest returns under a fair income tax law; that where the previous system of taxing intangible property has been oppressive, an income tax in substitution therefor will be accepted with a feeling of relief and general satisfaction; that a state income tax with the same amount of effort applied to its problems can be administered more effectively than a federal income tax because the administering officials are dealing with the people at closer range in a more personal relationship; that a state income tax is perfectly feasible as an administrative proposition and instead of entailing a prohibitive expense can be carried through upon an exceedingly economical basis; that a classified partial income tax, while perhaps in some aspects more equitable, is more difficult to administer and relatively more expensive; that the test of residence or domicile is a workable one by which to determine the incidence of the tax, and avoids all conflicts with other states if they in turn adopt it; and that, in the wealthier industrial states, a state income tax has by Wisconsin and Massachusetts been shown to be a practical solution of many problems of taxation and revenue.

THE POSSIBILITY OF THE RESTRICTIVE APPLICATION OF THE INCOME TAX PRINCIPLES TO A MUNICIPAL BUSINESS TAX

L. S. DONLEY

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Although this paper has a rather lengthy title, I wish to state quite frankly that I have not considered the application of any of the proposals to any city or municipality other than that from which I come. Consequently much, if indeed not all, of my argument must assume a local coloring. In order that all may better understand the circumstances which have occasioned the consideration of the possibility of the restrictive application of the income tax principles to the business tax in Winnipeg I shall preface my paper by a brief review of the taxation system by means of which our current civic revenue is raised.

Roughly, 90 per cent of the current revenue of the city of Winnipeg is raised from direct taxation, the other 10 per cent being obtained from miscellaneous sources, such as special franchises, licenses, etc. Of the amount raised by direct taxation fully nine-tenths is levied upon real property, and the remaining tenth is levied in the form of a business tax upon persons, firms, corporations, and companies that carry on business within the city. In other words, the taxation of real property contributes 83 per cent and the business tax seven per cent of the total current civic revenue. For the realty taxes, land is assessed at its full value at the time of the assessment and buildings are assessed at two-thirds of the amount by which they increase the value of the land upon which they are situate. The business tax is based upon the rental value of the premises occupied. Rental value does not necessarily mean the actual rent paid; the purpose of the assessment for this tax is so to determine the rental values that the tax may be as equitable as possible, and in many cases the rental value determined by the assessor varies from the actual rent paid.

The rate of the tax is six and two-thirds per cent of the assessed annual rental value. It is to this business tax that my paper shall have special and particular reference.

A business tax was introduced in Winnipeg in 1893 upon the abolition of the personal property tax, which was then as much condemned in Winnipeg as is the general property tax, insofar as it applies to personal property, in the United States today. At first the tax rate was the same as the tax rate on realty and was levied on an assessment of the capitalized annual rental value of the premises occupied. The assessment of the capitalized annual rental value was determined by taking into consideration a combination of floor space and rental values with a minimum and maximum rate per foot of floor space, according to the class of business. This basis of assessment was continued till 1906, when the present system of a flat rate or percentage of the rental value was adopted. At first the flat rate was eight and one-third per cent of the rental, but in 1908 this was reduced to the present rate of six and two-thirds per cent of the rental value. So far as can be ascertained, the original method of assessment on the basic principle of measurement of floor space was never intended to be permanent. In practice it proved most inequitable and unscientific. The present system of a fixed percentage of rental value has now been in force for ten years, and it is difficult to say whether or not it has proved less inequitable than the former method. It is most strongly argued against the assessment of personal property that it is largely a compromise between the taxpayer and the assessor, and the determination of rental value must always be more or less a compromise.

A tax based on rental value too often discriminates between different classes of business. Very often the business occupying a highly rented store on a main street may be operating at a very small margin of profit; yet, under a business tax on rental value, the contribution of such a business to the civic revenue must be considerably in excess of that of a neighboring business conducted in premises with a low rent, which may be earning very large profits. The business tax based on rental value has not alone proved inequitable, but from a revenue producing point of view it is not sufficiently remu-

nerative. Granting that rental values of business premises are not likely to increase appreciably for some time, if increased revenue is required from the present business tax the only method by which to produce it is to raise the percentage rate. This would only aggravate the inequalities to which I have already made reference.

In these times when war conditions prevail those responsible for the civic government of Winnipeg realize the absolute necessity of limiting its expenditures to those which are absolutely essential for the maintenance of efficient public service and administration. Notwithstanding this, the cost of administration has increased and may yet increase. Increased revenue is necessary and, therefore, the problem which faced the board of valuation and revision when it was appointed last year as a commission to consider and to report upon systems of assessment and taxation was how to increase the civic revenue and at the same time equalize the burden of taxation. It was the pleasure and the privilege of a deputation of the commission to investigate the systems of taxation in operation in some of the American states and to interview some members of this association who are held in highest repute, not only by the members of this conference, but by all interested in taxation throughout the American continent; and, as a result of the opinions received, of evidence taken, and of a most serious study, the commission resolved to recommend that the business tax on rental values be abolished and a system of income taxation be introduced.

The income taxation suggested in the report which the commission made to the city council is a restriction to a city basis of the principles embodied in the Wisconsin state income tax. The scope of the suggested income tax is, therefore, somewhat wider than that of a business tax in that it subjects to taxation "net income received from property located, business, trade or profession carried on, and wages, salaries or fees earned within the city". There are those entirely opposed to the introduction of any form of income tax, but I fear that a careful analysis of their opinions would in the majority of cases disclose a general dread of increased tax bills rather than any rooted objections to the principles embodied in an income tax.

So far as one can judge, the consensus of opinion in Winnipeg is distinctly favorable to the principles of income taxation; the only point at issue seems to be the restriction of these principles to a city basis. By some it is argued that when the constructive situs of the tax is so limited that only income earned within the city is subject to the tax it ceases to be a tax on ability to pay. Considered strictly from the viewpoint of ability to pay, one individual may have such business interests outside the city as would result in his making a larger contribution to the civic revenue than a neighbor whose income is all received from sources within the city. But, it is claimed, when the taxable income is restricted to that earned from sources within the city the latter may have to be the larger contributor. There are not only individuals but also business companies and corporations whose incomes are derived from sources outside the city, and the city council is giving most careful consideration to this aspect of the proposed tax.

Others argue that according as the situs of the income tax is restricted the possibility of evasion is increased. A state or provincial tax is easier to evade than a federal or dominion tax; a city or municipal tax is easier to evade than a state or provincial tax. Winnipeg in its relation to the province of Manitoba is in an unique position. Winnipeg is *the* great commercial and industrial center not only of the province but of western Canada. It represents probably half the wealth and perhaps one-third the population of the province; and it is scarcely likely that those who might be tempted to move to some other parts of the province to evade the tax would find it to their advantage to locate elsewhere. Further, it seems only reasonable to assume that if there were any evasion the loss of revenue would be small in comparison with that which results from the limitations of the present business tax system. It is because I realize the importance and the far-reaching effects of the issues which such arguments raise that I have ventured to bring them to the consideration of this conference. The restriction of an income tax to a city basis raises problems of social and economic import. Local difficulties may arise and may have to be overcome before a municipal income

tax can be adopted as an integral part of the taxation systems of our cities. Our commission was of the opinion that, in view of the conditions which prevail, any difficulties which might arise in our case should not be unsurmountable.

Now I come to the main purpose of this paper, that which is suggested in the title, the consideration of the possibility of the restrictive application of the income tax principles to a municipal business tax. By that I mean simply this: is not the proper basis upon which to assess a business tax the earning power of the business, and is not the most accurate measure of earning power the net profits of the business? If we were to adopt this basis the evolution of our business tax system would be but the history of the general trend in taxation; personal property gave place to a basis founded on the measurement of floor space; floor space was discarded for rental value; and rental value would be succeeded by net profits. There can be little doubt that at the time of their adoption the systems which have been in operation up to the present were thought to be the best or the most convenient measure of tax-paying ability. Are not taxing authorities agreed today that earning power or net income is the most accurate and the most scientific index of taxpaying ability?

The objective of a business tax is the profits of the business. A tax which is a percentage of the rental value is levied on an outward sign which is unreliable; but a tax which is levied on the total net profits of all businesses, whether they are conducted by corporations, companies, or individuals, would as a business tax be founded strictly on the principle of ability to pay. I have already made reference to the inequity of a business tax based on rental value. The year may have been a bad one and the year's business show a loss instead of a profit, yet it is charged with a tax which is large or small in proportion to the size and location of the premises in which the business is conducted. A tax based on the net profits of the business exacts payment only when there is a profit from which such payment can be made. Further, as has been pointed out, a tax on rental values discriminates between different classes of business, but a tax which is proportionate to the net profits of the business, no matter what class of busi-

ness it is, results in no discrimination between the retailer, the wholesaler, the manufacturer, or the professional man. Logically, then, it appears to me, a business tax approaches a standard of justice and of equity only as it is levied in the form of a percentage of the net profits earned.

The business tax as we have it today is the modern representative of the personal property tax, which was the first form of taxation to be adopted as supplementary to the real property tax; and it is essential, in order to equalize the burden of taxation, that the tax or taxes which shall operate along with the realty tax must produce a greater proportion of the current civic revenue. The personal property tax was considered inequitable; a business tax on floor space was considered inequitable; and now a business tax on rental value is not considered equitable, nor is it sufficiently remunerative. Only seven per cent of the current civic revenue is at present raised from the business tax, and, as already indicated, this proportion could only be increased by raising the percentage charged on rental value, which procedure would only intensify the injustices. It seems to me reasonable to assume that, with even a comparatively low rate, a tax on net profits would produce a considerably increased revenue. Therefore, I submit, a municipal business tax based on income tax principles would not only be equitable in incidence but would be most efficacious in the equalizing of the burden of taxation.

PROGRESS REPORT OF THE COMMITTEE ON PUBLIC EXPENDITURES

HERBERT J. HAGERMAN

President New Mexico Taxpayers' Association, Roswell, N. M.

The committee on public expenditures was appointed by President Howe in December, 1916. The committee has not been able to meet during the year and, so far, has accomplished nothing. Most of its members are very busy men whose activities have been very greatly increased by the war, and it has been impossible for them to give much time to the problems for a solution of which it was contemplated the committee would make a comprehensive program. Some of the members of the committee have, however, exchanged views by correspondence and have some suggestions to make at the present time.

It is apparent to the committee that no general and comprehensive program for effective publicity concerning the expenditure of public funds and the elimination of waste in public expenditures can be formulated without a good deal of preliminary investigation and careful study by competent men who can devote their whole time to the matter for a considerable period. Not much worth while can be accomplished from merely academic discussion, or without a thorough preliminary analysis of the work that has already been done and of the statistics already compiled by various public and private agencies. This preliminary investigation should include:

I. A listing of the various economy and efficiency commissions throughout the country and a comprehensive summary of what these various commissions are doing, in order to ascertain what subjects are not sufficiently covered at the present time, and by bringing the commissions closer together bring about a broader point of view on the part of all of them. This, it seems to us, is the starting point for any work which is likely to be useful and which will not involve many duplications. The Bureau of Municipal Research in New York,

with its numerous bureaus, associations, and other organizations, besides various federal agencies and bureaus, are all actively at work in this field. With the exception of the bureaus manned by men sent out by the Bureau of Municipal Research there is no co-ordination in these bodies and no similarity in their methods. Each starts with relatively little knowledge of what has been done elsewhere on the same problems.

There should be primarily a central clearing house of ideas on these special subjects, an agency upon which anyone interested in any phase of the problem could call for, at least, a complete bibliography on the subjects in which he is interested. Individual opinions of supposed experts are only worth as much as the expert really knows. None of them know any more about these problems than is comprehended in their own experience or in that of others. Every such experience related in print should be available at some central agency and known to those who take up these subjects, so that they may have their own first-hand knowledge rather than that knowledge as interpreted or related more or less accurately by third parties.

II. The investigation should further include a comprehensive study of the statistical and other material relating to public expenditures, with the object of determining as far as possible just what the tendencies are and how far it is possible and desirable to check public expenditures. Matters included under this second heading would not be of so distinctly preliminary a nature as those mentioned under the first heading, but would, of course, have to be subjects of continuous investigation under a permanent committee. It would, however, be necessary for effective work to make a preliminary résumé of statistical data now available, through federal and state sources, which bear directly or indirectly on the subjects of waste, surplusage, and inefficiency in the expenditure of public moneys.

We believe that no contemplated program should be made on the assumption that public expenditures are bad and that they ought to be stopped. If this were wholly true, government in most countries would long ago have gone to pieces.

The prevailing system has, however, been accepted for centuries and has been generally regarded by a majority of people as a necessary evil. Much of the expenditure is obviously right and much of it is manifestly and undeniably wrong; much is actually wrong but such as can be righted only after patient and long-continued pressure. It must be candidly admitted that, under our form of government and under all other forms of government now existing in the world, in varying degrees a certain amount of money waste is inevitable. Those who govern demand it by right of usage, and those who are governed more or less reluctantly accept it as part of the system. It would be futile for any national movement for the elimination of waste in governmental expenditures to start out with the hope that government business, as a whole, will ever be conducted as efficiently as well conducted private business. This seems especially true in a country like our own where, except in times of great crises, public work, largely because it is underpaid, does not often attract the best equipped men, or where because of political conditions it is often not available to them. While a certain amount of waste is, therefore, admittedly inevitable and must be so accepted, there is in our opinion a tremendous margin between that and what actually occurs, take the country as a whole.

A permanent organization such as we will suggest should therefore attempt to approach the matter with a certain breadth of vision as to where the line should be drawn and at the same time with a determination to stand with unalterable firmness when that line is passed. Otherwise there will be much wasted effort. While these primary investigations are being conducted and after they are completed there will be, we believe, various lines of activity essential to a permanent committee on the elimination of waste in governmental expenditures.

1. It should keep in touch with those engaged in official movements for budget making and with attempts to pass laws looking towards governmental efficiency, and be prepared to offer them help either by putting them in touch with available experts or offering guidance to the men they employ. The National Tax Association is now keeping more or less in touch

through correspondence with the financial legislation in the various states, but under a permanent and properly equipped organization this activity might be so vitalized that the association's services could be made available promptly to any state in case they were needed or desired. Through close association with the Bureau of Municipal Research and other similar bodies it should be possible to have available experts whose services could be offered when wanted.

2. It should, we believe, at once start, under its general supervision, intimate studies by competent men of several of the main items accounting for the bulk of public expenditures in times of peace. These separate studies should, at first, include: (a) expenditures for road purposes; (b) expenditures for school purposes; (c) expenditures for charitable purposes; (d) expenditures for the administration of justice. At the same times the general subject of the control of public expenditures, including budgets, tax limitation laws, the control of bond issues, and a general supervision of the work of the men engaged on the lines above enumerated could be looked after by the whole committee, or a salaried director acting under the committee's supervision.

3. It should, if possible, be prepared to offer the states: (a) a model tax limit law; (b) a model budget law; (c) a model constitutional budget amendment.

It should, in order to round out the effectiveness of this work, be able to offer in terms of general principles the best model laws, capable of modification to fit the given case. This in itself is no small problem, as is proven by the fact that this association has been in existence for ten years and its conferences are not yet in agreement as to the elements of model tax laws. Undoubtedly the most practicable start towards curtailment in public expenditures is through tax limit laws; and while, owing to differing conditions in the various states, it is difficult to draw up a model law, ready for adoption in any state, it is possible with the experience had in California, New Mexico, and other western states to present a drafted law which can be used as a basis of new legislation anywhere.

4. It should be prepared to assist in the formation of state and local tax associations, each to work in its own field along

lines of economy. The committee should be prepared to offer guidance to these associations and to put them in touch with available material for executive heads.

5. The committee should be prepared and have the equipment to undertake much more than the mere work of preparing the way for the compilation of statistics showing the amount of increase in public expenditures from year to year. We are actually not so much concerned with the growth of public expenditures as with giving the people the information which will make it possible for them to obtain adequate results for the money they pay in taxes. It should be perfectly patent to those who know something about the way public money is spent that very large savings can be made with no impairment of public service. With the right kind of organization and with the desire present, as we believe it is, to spend public money wisely the service could be improved and at the same time the cost of government materially reduced.

In general, the efforts to bring about economy and efficiency have not yet been productive of large results because the way has not yet been definitely pointed out to make savings. Some of the municipal bureaus and taxpayers' associations have been fairly successful because they have been able to point out the way. There is dissatisfaction on every hand but it does not ordinarily result in the improvement of the conduct of public business, because nobody is able to point out the means of accomplishing the desired ends.

It has, of course, been suggested to members of our committee that on account of the war the present time is inopportune for the inauguration of a national movement for the elimination of waste in public expenditures. But on consideration it seems to us that there never was a time when the work was more needed than at present; that, if there be waste in the federal government's peace expenditures or in its war expenditures, no more patriotic service can be rendered than to call attention to that waste so that the federal government, exercising its enormous war powers, may be as efficient and direct as possible. We are all willing to contribute our every dollar to the war when it is needed, and I have no doubt that every man here has done his part in this and other ways, but there

is no reason why the federal government should not in this crisis save every dollar possible. It will not do so as long as there is not any specific attention called to waste.

It would seem to us that at the present time active propaganda might profitably be directed towards the suspension of what might be called the unessential or doubtful functions of government. It is an essential part of war finance that both in public and private spheres of action unnecessary activities be discontinued. So far there seem to be few signs of a realization of this truth in governmental circles. On the contrary, purely peace functions which might be suspended for a time are in many instances expanding. This is a golden opportunity to eliminate the unnecessary, but the opportunity is not being realized. The difficulty in this connection is to define what is non-essential, and more particularly to find practical ways and means to do away with non-essentials. This is a real difficulty, as for instance in connection with the extensive road improvements which are now being carried on under the encouragement of the federal government. There are many ways in which enormous savings could be quickly effected by the simplest exercise of administrative discretion or legislative action. There is not time here to go into details, but we may take as a single item government printing. For the fiscal year ending June 30, 1916, over \$6,000,000 was expended by the public printer for work performed, of which \$1,685,306 was for congressional printing alone. Of this, \$821,188 was charged to Congress as a whole, \$318,620 to the Senate, and \$545,497 to the House; \$402,000 of this was the cost of the *Congressional Record*. The figures for the last fiscal year are not at hand, but there seems to be little curtailment of expenses. The *Congressional Record* for the last session of Congress contains 8,574 pages, and the 32,000 copies distributed consumed over 725 tons of paper, or about one and one-third tons for each member of Congress. Thirty-six freight cars loaded to a 40,000 pound capacity would be required to transport this edition of the *Congressional Record*. This in view of the fact that print paper has advanced over 100 per cent during the last year. There is no intelligent man in or out of Congress but who knows that the waste in government print-

ing is pitiful. The extra printing now made necessary by the war will be very great. There certainly should be some retrenchment elsewhere.

At this most crucial period in the history of our nation, at a time when every private citizen is to be called upon to exercise the strictest economy, when many of the best intellects of our land are gladly giving their time and substance to the winning of a war against the most unconscionable and cruelly efficient nation the world has ever known, it would seem that, if possible, an effort should be made by the government itself to set an example of saving wherever saving can be made. This is especially true because of the fact that, due to our unpreparedness, great waste of time and machinery as well as of money and of men is absolutely inevitable in connection with our preparations for war. The war must be won; it will be won, at whatever cost. And when it is over, which may not be for years, the necessity for the elimination of waste in order to meet the overwhelming burden of debt will be doubly apparent. There is no more patriotic duty than is involved in an attack—a vigorous, sincere attack—on the problem at the present time.

The term "efficiency" is unfortunately popularly in bad repute at the moment. To the average man there is a certain ominous and heartless ring to it. We suggest, therefore, that if the association shall determine to establish a permanent organization to deal with public expenditures it be called "A committee for the elimination of waste in public expenditures", or "A committee on waste in government"—not "A committee on national efficiency".

It would be futile, we think, to inaugurate this work unless it were very thoroughly done and unless sufficient money can be pledged through some source to guarantee continuous work for a series of years by the best equipped men. Whether such work, provided the funds can be found, should be undertaken by a committee of the National Tax Association, or by the association itself under a paid secretary or director, is a matter which should be decided by the association itself. The association, if it were to enter this field, should have a paid secretary or other executive officer. All the present officers are

busy men of affairs, and, invaluable as their services have been, they can hardly be expected to take executive direction of matters so vital as investigations into public expenditures. They can advise and direct in matters of policy. They can hardly be asked to take detailed executive direction of methods. Such an executive officer should be located in New York, in touch with the principal officers of the association and the Bureau of Municipal Research. Just what would we expect such a department to accomplish?

The Bureau of Municipal Research and other organizations, as stated above, have done and are doing a great deal of splendid work for more efficient government. The National Civic Federation is also doing good work in the way of publicity. A national secretary should serve to correlate these activities and particularly to bring home to them the many-sidedness of their problems. Reform in government is as broad as government itself, and tax reform must recognize its intimate connection with governmental efficiency. This work of correlation cannot be specific. It cannot offer to do for states or localities the investigative work which they, through local associations of taxpayers, must do for themselves. But the national organization can offer general suggestions, expert advice, and place local organizations in touch with expert investigators. If, for instance, prison administration is under investigation in any state, it should be able at least to give full information as to prison administration in all the states and the federal government and give references to other similar investigations, their reports, problems, and conclusions. When new citizens' organizations are being planned in any state or locality the National Tax Association should be able to offer advice and to direct such organizations into the proper lines to make their work most effective.

The above activities should cost not more than \$20,000 annually. The paid secretary should cost up to \$5,000, clerks and stenographers \$3,000, and travel, office expense, and publicity the remainder.

The large work of such a department of the National Tax Association should deal with federal appropriations and expenditures. No doubt little can be done with the present war

disbursements. But when the war is over, the readjustment to a peace basis is certain to present major problems of interest to the federal taxpayer. He should be prepared in advance with the facts on federal finance to assist in the readjustment, particularly urging the maximum reduction in federal budgets, so that the business of the country may go forward rapidly, unhampered by political retention of functions, necessary enough now, but wasteful in times of peace. The intensive study of federal expenditures could hardly be overdone. After the war taxation will be necessarily heavy to pay the interest and principal of the war debt. We should be sure that every possible governmental saving be effected to relieve taxation as much as possible and to shorten the period of war debt liquidation.

An office should be maintained in Washington with a competent investigator in charge. A high grade publicity agent should also be secured to give wide circulation to the general activities of the association and to the matters found by such investigations. The political use of federal funds should be fully exposed, with the actual facts covering each such appropriation. The agitation for proper budgetary methods should be made continuous and effective. Just how these things should be done is, of course, a matter to be determined on the ground. Just how large an organization should be maintained is a question to be answered only when the volume of work to be done is known. Every possible co-operation should be secured from the departments and from Congress. A good investigating director, with assistants and an adequate office force, should be provided. Publicity should wait until the rest of the organization is operating properly. The publicity portion should be a part of the central New York organization, rather than of the branch in Washington. The budget for the above plan might well start on the following lines:

The New York office	General secretary	\$5,000	
	Publicity.	4,000	
	Office assistants	3,000	
	General office expense.	3,000	
	Travel	5,000	\$20,000

The Washington office	Director in charge.	4,000	
	Assistants	16,000	
	Office assistants	4,000	
	Office expense	4,000	
	Travel.	2,000	30,000
	Total		\$50,000

Such a program, guaranteed for not less than four years, should show real results. The budget is very modest. In so vast a machine as the federal government a large amount of original investigation is not to be expected from it. But it would be better to begin modestly rather than extensively, to attack the problems by degrees and expand as the need for expansion proves itself and enlists support by the results secured.

HERBERT J. HAGERMAN, *Chairman*

THOMAS S. ADAMS

ADAM SHORTT

E. H. WOLCOTT

TAXATION OF MERCHANTS' AND MANUFACTURERS' STOCK

EDMUND H. BODDEN

Tax Commissioner, Milwaukee, Wisconsin

Tax investigating bodies, students of taxation, and experienced tax administrators have always been confronted with the practical difficulties of assessing this class of property. Compared with the assessment of other classes or kinds of property, both real and personal, this class has never been uniformly and equitably assessed. However earnest and efficient the administration of a general property tax may be, in a large city it is practically impossible to assess accurately the value of merchants' and manufacturers' stock. The assessment of such property is not satisfactory, and by the very nature of things can never be so. Some of our ablest writers and advocates of tax reform have frequently alluded to these objectionable features.

This form of taxation has always appeared to me to be one of the weaknesses, if not the greatest one, of the present tax laws of our country. Many and various substitutes have been advanced; for instance, a classified property tax has been proposed. Again, it has been suggested that ice dealers be taxed on their average yearly stock, also coal dealers, grain dealers, lumber and logging companies. Furthermore, it has been proposed to substitute a pure income tax in lieu of a property tax; and we might cite many other substitutes for this form of taxation suggested by acknowledged authorities.

Last year we had some difficulties with the grain dealers in the city of Milwaukee. They succeeded in having passed a law taxing them a certain percentage per bushel upon all grain that passed through their elevators during the year in lieu of a tax upon their stock on hand. This greatly reduced their tax and we fought out the proposition in the Supreme Court of Wisconsin. The court held this to be a valid occupational tax. The bankers of our state, whose bank stock

under the present law is assessed at its market value, endeavored to have our legislature pass an income tax law on the basis of 10 per cent of their net earnings in lieu of the property tax. The main reason advanced by the bankers who favored this change was the injustice and inadequacy of the assessment of merchants' and manufacturers' stock as compared with bank stock. The legislature, however, did not pass the law. Our state tax commission has favored the abolition of the personal property tax altogether, having instead a pure income tax. Our governor in his message to the legislature strongly advocated merchants and manufacturers being required to pay both the property and the income tax.

Because of this local agitation, I have tried to evolve some method which would prove more just and equitable to both our merchants and manufacturers and to the state than either of the methods suggested. My object in advocating the proposed change of method is to obtain a more just and uniform assessment of this class of property and a more just and equitable adjustment between it and all other property. The thought of deriving more revenue from it entered into the proposition only insofar as I might find that this property had heretofore not borne its proportion of taxes based upon a fair and reasonable basis. After rejecting the assessment of this class of property on the average and the other suggested substitutes, the thought occurred to me that, if the bankers' money is willing to pay 10 per cent of its net earnings for taxes, why should not our merchants and manufacturers be willing to pay a relative amount based upon their gross sales? Why not tax merchants and manufacturers for the privilege of doing business, measuring such tax by their gross sales? How then can we determine what rate to apply to gross sales so as to obtain a relatively equitable rate?

With this thought as a basis, I endeavored to find the relationship between the normal net earning power of money and the gross sales of a manufacturer or merchant. The earning power of money in our state is five per cent. While it may earn more, the consequent risk is greater. Averaging the greater risk with the rate, however, no more than five per cent will be realized. What relationship then does this bear to

gross sales? By taking \$1,000 of money at five per cent we have a \$50 net income and, with a tax of 10 per cent thereon (the rate the bankers were willing to pay), a \$5.00 tax is obtained. Taking gross sales at \$1,000 and taxing that at one-half of one per cent will produce the same amount of tax (\$5.00). To determine the rate of one-half of one per cent as above applied to gross sales on the basis of 10 per cent on net income, I multiply the net income (\$50) by 20 and, consequently, divide the 10 per cent by 20. In this way the same results are obtained and the relative basis between net income of money and gross sales is established for our purpose.

At once this question will present itself: Is not the income on gross sales in one line of business larger than in another? This question, however, does not fit the situation, for we are here determining the relative basis between normal income of money so as to ascertain a rate to be applied for the privilege of doing business based on gross sales. You must disabuse your mind of the idea that this is a property tax; rather it is a privilege or license tax to do business. As will be explained later in this paper, the difference in profit realized on gross sales will be taken care of by our income tax. The question as thus presented does not, however, raise all the objections. Besides the objection that profits may vary, due to the fact that some stock is turned at a greater profit while other stocks are turned over many times during the year, thus producing a greater profit, there is the objection that the rate is a fixed rate and, therefore, does not vary with the increase or decrease of public expenditures. With these points in mind, and taking one-half of one per cent as a basis, I endeavored to meet the objections heretofore stated.

In my calculation of one-half of one per cent I did not take into consideration the fact that if money paid a tax of 10 per cent upon its net income it would pay no personal property tax. In order, therefore, to arrive at a proper and reasonable adjustment of this rate and to take into account an income tax which would act as a leveling tax as between concerns which made little or no profits and concerns which made large profits, I found it necessary to reduce the rate. After careful consideration and research work based upon data in my office

showing the assessment on present stocks and the income tax paid by merchants and manufacturers, and by preparing a table of figures, which accompanies this paper, I came to the conclusion that the occupational tax should be one-quarter of one per cent rather than one-half of one per cent, in order to take into account the additional income tax, or the leveling tax.

This, however, still left the objectionable feature that the rate was a fixed one. The great majority of tax experts are opposed to fixed rates for the reason that property enjoying a fixed rate does not contribute its share to special or extraordinary improvements or expenses incurred by municipalities. It does not give the merchant and manufacturer an interest in expenditures and in the economical administration of the city government. With the basis then of one-quarter of one per cent on the gross sales plus the income tax I sought a form of taxation which would be flexible, depending upon the ordinary rate of taxation applicable to all taxable property in the city. The average rate of taxation applicable to real estate and other taxable property in Milwaukee is two per cent. Taking gross sales at \$1,000 and applying the rate of one-quarter of one per cent, a tax of \$2.50 is obtained. By taking \$1,000 gross sales and dividing the same by eight and applying to the quotient so secured the going rate (which as stated above in our city averages two per cent) we find the result to be the same, \$2.50. The figure eight is used as the divisor because by using this figure we come to the same result; dividing the amount of gross sales by the figure used as a multiplier of the rate (eight), the result must be the same.

I have used the divisor eight to gross sales as gathered by my assessors and have tested it out on various forms of industry, as may be seen from an examination of the table heretofore referred to; and I have found that in practice it lends itself best to existing conditions in the city of Milwaukee. From the steps in my calculations by which I have arrived at this figure eight it can be seen that it is not an arbitrary basis, but that it is based first upon the relation between the net income of money and the gross sales of merchants' and manufacturers' stock. I am at the present time engaged in deter-

mining the various net profits on gross sales, and I find from those industries where I have obtained reliable figures thus far that the factor eight is practicable when used together with the income tax. In other words, it checks up. We find also by using the factor eight that where merchants' and manufacturers' stocks have heretofore been assessed at their full value (the present law in Wisconsin) tax they will on the average be taxed 37.5 per cent less than under the property tax, and we further find that the per cent of tax used as an offset to the income tax by our merchants and manufacturers in the city of Milwaukee averages about the same per cent, thus equalizing one with the other.

In a few words, my scheme of handling the taxation of merchants' and manufacturers' stock is to divide the total sales for the year by eight and multiply the fraction so secured by the property tax rate, adding thereto the present income tax of Wisconsin.

We have, therefore, overcome the two objections, for we have a tax which with the income tax will take care of the varying profits on gross sales, and when applied by the method proposed will be a flexible tax depending upon the ordinary rate of taxation applicable to real estate and other taxable property. In other words, we have a tax which ties up the tax rate on gross sales with the general rate applicable to real estate and other taxable property. As the needs or requirements of the municipality increase, so will the taxes on this class of property increase or decrease in the same manner as on all property which is assessed under the property tax law. It will give to the merchant and manufacturer an interest in the expenditures and in the economical administration of government. It will insure absolute uniformity so far as the occupation tax is concerned and, as our income tax is a graduated tax, it will act both as a leveling tax and a tax based upon ability to pay. It will have a tendency to encourage new enterprise, to foster struggling concerns which may have made no profits by lightening their burdens while requiring them to contribute a substantial amount towards the maintenance of the government from which they derive protection and many other valuable and expensive services in years when they have no income.

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Then, too, this form of taxation will eliminate guesswork on the part of the assessors in valuing the numerous and varied kinds of merchants' and manufacturers' stock. The only thing that will be required of the merchant and manufacturer will be a statement under oath of the gross sales for the previous year. This is the least inquisitorial and the easiest to answer of any of the statements required to be answered for the purpose of taxation; indeed, the merchant and manufacturer must make answer to the very same question to both the federal government and the state in the determination of the income tax.

DISCUSSION

SECRETARY FRED R. FAIRCHILD: I have here a communication from Mr. Lessing Rosenthal, of Chicago. Mr. Rosenthal, who is a lawyer, without any solicitation at all on our part has been of great assistance to this association. In a short letter he has offered some suggestions which are interesting and I would like to present them to you at this time.

Law offices of
Rosenthal, Hamill and Wormser,
105 West Monroe Street,
Chicago

NOVEMBER 10, 1917

MR. FRED R. FAIRCHILD,
Secretary of National Tax Association,
Piedmont Hotel,
Atlanta, Georgia.

Dear Sir:

As a member of the National Tax Association and a delegate appointed by our governor to attend on behalf of the state of Illinois, I am extremely sorry that I cannot attend the conference and meeting to be held in Atlanta during the coming week. I find that I am under the immediate necessity of going to New York and I feel that it will be impossible for me to be done in time to go down to Atlanta.

I wish to say, however, that I regard the work of the National Tax Association of extreme importance and never more important than at the present time. As a result of the great war in which we are now engaged, we undoubtedly will have heavy taxation for years to come, and it seems to me of supreme moment to the country at large to have this taxation based on proper principles.

I trust at the coming conference adequate consideration will be given to the war revenue act which has just been passed and which in a number of respects, it occurs to me, is based on unscientific principles. I might mention three:

1. The large increase in national inheritance taxes, it occurs to me, is unjustified because:

(a) An inheritance tax ought to be more or less of a permanent nature. It ought not to fall heavily merely on the families of those who happen to die in any particular period. It means too great discrimination. Why should one family be taxed heavily,

merely because the father happens to die during the war period, whereas all other families similarly situated escape?

(b) Inheritance taxes are also resorted to by all the important states. A heavy national tax, combined with any number of heavy state taxes, is unfair. At the present time, if a resident of California whose property is invested chiefly in the stock of a New York corporation dies, his estate will have to pay a very heavy national tax, a very heavy California tax, and a heavy New York tax. There is something wrong about this.

(c) It is not altogether fair to measure the amount of the inheritance tax by the size of the estate, irrespective of the amount that those who are to share in it are to receive. Under the federal inheritance tax, if a man with 10 children dies, leaving an estate of \$1,000,000, each of the 10 children receiving \$100,000 will have to pay as large a tax as the sole child of another man leaving at his death a small estate. The principle that the tax should be upon the right of succession, rather than on the right of transfer, is fairer.

2. It strikes me that section 209 of the present war revenue act, levying a tax equivalent to eight per cent on the net income of a trade or business (including professions and occupations) is unfair. It certainly cannot be classed as an excess profits tax. It is a tax on work and labor. It is a tax on the producer. From an economic point of view, the tax ought to be larger on unearned rather than on earned income. This is scientific and is the distinction, I understand, made in England. What is the case here? A man who earns \$50,000 a year as the result of his ingenuity and untiring work and labor will have to pay a normal tax practically equivalent to 12 per cent; a man who is idle and lives on his capital will have to pay merely the normal tax of four per cent. These considerations make the tax obnoxious, without regarding such incidental matters as the fact that the larger the number of partners the less is the exemption under the law of each individual partner.

3. The excess profits tax, as embodied in the law, can hardly be so considered. It is practically an additional tax levied on business, with excessive rates for the small business man. The little man who transacts his business with a capital of \$20,000 and has a net income of \$15,000 pays an excess profits tax of over \$5,000, or more than one-third of the net income of his business. The large capitalist, having, we will say, a capital of \$1,000,000 and earning an annual profit of \$750,000, does not pay any larger rate. If the amount exacted for taxes were small, perhaps no complaint could be made because the tax is not graduated, for the reason that the rate is the same for all; but when the rate is large and a great portion of the annual income is taken away, it seems to me there ought to be some more equitable discrimination than is exhibited in the present excess profits law, between the large and the small income.

I am mentioning these matters in the hope that they may be consid-

ered, in connection with the important problems coming before the association. I have indicated them rather hastily and not with the idea of phrasing the objections accurately, but merely with the notion that I might bring them to the attention of those who are much more competent to pass on the matter than I consider myself.

Trusting that the conference will be a successful one and that the association will grow in membership and power, I am,

Very truly yours,

LESSING ROSENTHAL.

MR. C. B. GARNETT, of Virginia: I desire to correct one statement made by Doctor Page with reference to the merchants' license tax in Virginia. He was speaking with reference to the condition before the special session of the legislature in 1915, when the commissioner of revenue, who is a local officer, elected by the people, was accustomed to receive from the merchant a statement of his purchases and upon that make an assessment of the license tax against the merchant. It is true that the merchant was accustomed to return his purchases as of the lowest class and very few took accurate pains to find out what the actual purchases were. In order to meet that situation the legislature passed a law amending the merchants' license tax, by which it was required that the merchant should keep on a separate account his purchases by the month, and if he failed to keep those purchases by the month then automatically the minimum license tax of \$25 per year was assessed against him; and in addition to that the commissioner was then required to add the actual license tax, which he could reach by any means possible. That return goes before the local board of review, is corrected before the local board of review, and is subject to inspection of other officers; so that now we do not have the defect complained of by Doctor Page, and the merchants' license tax has tremendously increased. I thought it was due the taxing officers of the state of Virginia that I should make this explanation.

MR. OMAR H. WRIGHT, of Illinois: Proud as I am of Illinois, of its wondrous achievements industrially, commercially, and agriculturally, of its wonderful military record and of its patriotic governor, Governor Lowden, the best and biggest governor the state has ever had; yet when it comes to matters

of taxation I have nothing to say. Our methods of taxation are obsolete, cumbersome, inequitable, and unscientific; but we have something in Illinois that I think will be of interest to you, relative to the methods of state expenditures. Our last legislature passed what we call the civil administrative code, abolishing at that time some 120 boards and commissions, and in their stead departmentizing the business of the state into nine departments. I was appointed by Governor Lowden as the director of finance under this new arrangement and my department has direct control of the state's expenditures. Previous to the passage of this code bill, we had boards for barbers, boards for bees, boards for birds, and boards for everything from the grinding of an eyeglass to the shoeing of a horse. Now, when the governor wants to know anything about what is going on in the state, instead of calling upon some one or more of 400 or 500 men, he can call on one of nine directors and get the needed information. Under the present law we act as a governor's cabinet, as nearly as it can be done constitutionally.

We are accomplishing some splendid results in the matter of supervising expenditures. They are running something like \$70,000 a day at this time, and none of this amount can be drawn from the treasury until it has the approval of the department of finance, except the executive officers' expenditures, which are not under our supervision. When I say to you that probably from two to 10 or 15 vouchers go back to the directors of the various departments or money expending agencies every day for correction and change, you can by that judge that we are accomplishing something along the line of proper business methods. We have eliminated and consolidated the business of the state and it is being developed along proper lines in the same direction as is being undertaken by the big business and commercial corporations of today. For instance, our traveling expense item, which runs something like \$750,000 annually in Illinois; I fancy I am well within the lines of conservative statement when I say we will reduce that expenditure at least 40 per cent this year just because every one of those expenditures is closely scanned. We compel a receipted and itemized bill for every expenditure over \$1.00.

and we have eliminated almost all the wasteful extravagance and many of the "spring overcoats" which the employees of the state were accustomed to put into their expense accounts under various names.

The experience has been exceedingly interesting to me as a business man who has never before been interested in politics to any great extent, because the opportunity for sincere honest accomplishment is unlimited. I may digress long enough to say that the nine directors were picked out personally by Governor Lowden, regardless of political affiliations, and they are devoting all their time and all their energies to their positions. At this time an office in the state of Illinois is a position and not a job. All these directors and state employees generally are putting in just as long hours and just as full time as they would were they in other lines of proper commercial endeavor. Still, when it comes to the question of state expenditures, economize or standardize as we may, the difficult part of it—when it comes to paying \$12 a barrel for flour as against \$3.00 or \$4.00; or \$2.45 a ton for screenings that could be bought for 25 to 50 cents a ton a few years ago; \$1.40 for potatoes; and everything else in proportion; with the between 25,000 and 30,000 patients and public charges which Illinois has upon its hands—it is pretty difficult to save any dollars as against previous expenditures. Nevertheless, as Governor Lowden told me upon the occasion of our first interview, he proposes to see so long as he is governor that Illinois comes somewhere near receiving \$5.00 in value for \$5.00 in expenditure. That is as much as we expect to do, and we are coming nearer to doing it than during any previous time in the history of Illinois.

MR. THOMAS P. PAGE, of Utah: At the request of the gentleman from North Carolina who read a paper yesterday, I want to make a few remarks on the transfer tax or the unearned increment tax, as it is often called. I find that Germany introduced that tax in their states, and introduced it on a basis of two, three, and five per cent, and from the people I met there I judge it is working fairly well. England introduced that tax seven or eight years ago, before the war. I

really do not know much about the working of it there because it takes some time to get it into shape; but in England it is 20 per cent, not two, three, or four.

It is practically this: a man buys a lot worth \$10,000, he puts on a building worth \$5,000, and he sells out for \$25,000; then he has made a profit of \$10,000 because the building is the same as it was before. On the strength of the \$10,000 he pays \$2,000; \$1,000 to the general government and \$1,000 to the locality. This tax is due at any time a sale has been made or when property passes by inheritance. It is also true in the case of corporations every fifteen years and it is spread over fifteen yearly payments.

I suggested something of that kind to the Utah legislature two years ago. I made it 10 per cent instead of 20, and in a country like ours where property values increase rapidly I thought that would be enough, and also on the basis of ten year payments for corporations. It did not go through. I did not expect it at that time. I would possibly have presented the same thing to the present Utah legislature, but when we came there the lower house was in the hands of one party that had so much reform legislation and there were other things of such importance that it was not presented at that session. But I still believe that is a way of getting revenue, and it is something like the good fisherman who can get fish out of the creek when there are no fish there.

As to the remarks on the income tax. In the lower house of the Utah legislature they passed unanimously a state income tax. It passed the house unanimously but it did not get through the senate and is not a law. It will likely come up again. We considered a number of things for the sake of getting an income tax that was workable, an income tax that was lawyer proof, and one that would not be entirely dependent upon expert administration, like the income tax of the gentleman from Massachusetts, or the gentleman who spoke of the income tax of Wisconsin. We patterned it after the federal income tax and we made the basis of it the federal income tax, on both the corporation tax and the individual income tax; not because we thought that it was the very best income tax that could be had, but because we thought more

could be got from it and it would be workable without expert administration. A gentleman from Oklahoma said yesterday that we ought to get returns from the federal income tax for the assessment of state income tax. I think you will find a provision there which states that the governor of any state can apply to the United States to permit some one to look over returns. So, in that case, we can have all the returns of the federal income tax, the same basis, without any great amount of clerical help.

The limits of exemption did not suit us at all, the \$3,000 for single and \$4,000 for married men; we thought the exemptions were entirely too high. At the present time the federal income tax is considerably lower. I think we should make a basis on that ground which would be more applicable as far as the exemption is concerned. As to the different vocational taxes and things of that kind, I am inclined very strongly to think that the income tax would be more equitable and saving in administration.

MR. OSCAR LESER, of Maryland: I think the gentleman is mistaken about the provision in the federal law which permits the inspection of income tax returns. I think there is a provision that the President has the power to grant that right. It is discretionary with him.

MR. THOMAS P. PAGE: You are right.

MR. OSCAR LESER: The very illuminating explanation of what has happened in Illinois leads me to think it may be of interest to learn that in the state of Maryland we have adopted what I think is the first constitutional state budgetary system. The budget will be in practical operation for the first time this year; that is to say, in preparation for the coming session of the legislature in 1918. The appropriations must be recommended in a formal budget statement by the governor, the governor himself being made the budgetary officer. All appropriations required under the constitution or under existing statutes, to be paid must be included. No appropriations can be considered by the legislature (with certain exceptions

which I shall indicate) unless they have been set forth in the budget. The legislature is empowered to cut down, or eliminate entirely, any item recommended by the governor, but there is reserved to the legislature the right to appropriate additional sums or items on certain conditions:

First, that the general budget appropriation bill shall be out of the way, for it must first be passed before any other independent appropriation measure can be considered. In the second place, the additional appropriation must be embodied in a separate bill, which is subject to the veto power of the governor. In the third place, such bill must have in it a provision for the imposition of a tax or charge to meet the extra appropriation. Thus the power of the legislature is prudently regulated but not removed. There is that splendid check upon log rolling and heedless action and all the other evils we experienced under the old system.

One word on another subject—in relation to the license tax. I do not endorse the gloomy view taken by Professor Page, of Virginia, about the nature or administration of this tax in that state, particularly since it has been explained by the chairman of the corporation commission of Virginia that certain improvements in the administrative features have recently taken place. I think there still remains a great improvement which would result in a more centralized administration, if the whole of that tax could be under the supervision of some central state officer. But there is this excellent feature about the Virginia law that I, for one, never knew existed, and that is that this license tax is a substitute for and not in addition to the regular or direct property tax. In most of the states where there are business or traders' or mercantile licenses the charge is in addition to the ordinary property tax.

That is the case in my own state, Maryland. We have the so-called traders' license law, enacted many years ago, long before department stores were heard of, with the fee scaled from \$12.50 up to \$150 per annum, based upon the average value of the merchandise, with a lower rate for female traders, which has resulted in the creation of a large number of vicarious female traders. But if you are considering that sort of system you ought also to consider the Pennsylvania mercantile

license system, which I think has features in it that are better than those of any other state. There, also, the mercantile license is exclusive. In Pennsylvania there is, in fact, except for a very small item of carriages "for hire", no direct tax, local or state, on any tangible personal property. The merchant or dealer is reached by this mercantile license tax, administered through special local appraisers under the general supervision of a state officer, the auditor-general.

This tax, however, is not based on the value of the merchandise at a particular time, as in New York and other states; nor even on the average value of the merchandise during the year, as in Maryland; nor on the Virginia plan of using gross purchases. The Pennsylvania system measures the tax by the gross amount of business; that is, by the gross sales. A distinction is made in the Pennsylvania law as between retailers and wholesalers and vendors on the exchanges, which is reflected in the classified rate. As I remember it—and it has been twenty years since I lived in Pennsylvania and there may have been some changes since then—the rate is \$1.00 for every \$1,000 of sales in retail transactions, 50 cents per \$1,000 in wholesale transactions, and a 25 cent rate in transactions on the exchanges, that being due to the fact that there is a diminishing margin of profit in the last two classes. There is an additional fixed annual charge of \$2.00 and \$3.00, respectively, for retailers and wholesalers.

MR. WILLIAM H. CORBIN, of Connecticut: In our meeting last year there were only two states, West Virginia and Connecticut, that used the return to the federal government for the purpose of a state income tax. I am glad to know that New York state has passed a law which provides for the use of the federal return in the computation of the state income tax and that a similar law was proposed in Utah. Probably as the years go on there will be other states to report that they are using the federal income tax return, both for simplicity of administration and economy as well as the greater convenience to the corporations in making the returns. Eventually every state in the Union that has a state income tax should use the report to the federal government for purposes

of state administration, with a proviso for a fair apportionment of the income to the state of residence and also to any other state, to avoid any unfair piling up of taxes on the corporation doing an interstate business. In some such way there can be worked out a fair apportionment to each corporation doing business in several states of the Union, so that it will pay only a fair proportion of its tax to each of the different states in which business is done.

MR. H. L. HART, of Montana: I want to assure Mr. Corbin that the state of Montana uses the government form of return on income, so he may add us to the honor roll.

MR. WILLIAM H. CORBIN: Mr. Wright, of Illinois, mentioned a very admirable law that has recently been passed in that state relative to its financial affairs. I told at the conference a year ago what happened in Connecticut along this line. I would like to repeat very briefly that we have a state board of finance, consisting of the treasurer, the comptroller, and the tax commissioner, ex-officio, and three citizens appointed by the governor for a term of six years, thus holding over three sessions of the legislature, as we have biennial sessions. These six men sit with the appropriation committee of the legislature, consisting of seven men, thus forming a combined appropriation committee of 13. Every bill presented to the legislature has to be reported to this appropriation committee. The members of this board of finance have equal voting power with the legislators in committee upon these measures. The result has been, as shown by our experience the last two years, that this board of finance is exercising a very economical and I think businesslike effect upon the appropriations for the state of Connecticut. So far as I know, Connecticut is the only state that has a provision which gives voting power in legislative committee to a board of finance similar to the one I have mentioned.

MR. OSCAR LESER: Is that provided by the constitution?

MR. WILLIAM H. CORBIN: There is no restriction, for the

constitution of Connecticut is somewhat like a "Mother Hubbard"—it covers everything and touches nothing.

MR. THOMAS P. PAGE: All I wish to say is that Utah did not pass the income tax; it was passed in the house but unanimously defeated in the senate. We copied the Maryland budget bill word for word, ratified it, and it is a law of the state.

MR. E. B. HOWARD, of Oklahoma: I have discussed once or twice before the Oklahoma income tax. I had not intended to say anything of it today until I received a suggestion from the gentleman from Utah. I think he said that they tried to draw a law which was lawyer proof. I want to suggest that if the gentleman from Utah or anybody else can draw for me any kind of tax law that is lawyer proof I will have our income tax revenues for one year diverted to his purse. I say that because, since I have been trying to enforce that income tax law, every time I have left my home in the morning I have not known whether I was going to return that night or go to jail in contempt of some court. Why? I endeavored to enforce that law. We have a good law, so far as it goes, and it would bring us a great deal of revenue—but the first gentleman I tackled lived over in Illinois, and he gave me absent treatment. He is getting \$3,000,000 income from my state, yet in the courts he pled that he operated all that property from his headquarters in Illinois.

I am directing your attention to these facts so some of the rest of you, when passing income tax laws, may bear in mind some of these experiences you will wish to avoid. I tackled a man who had some stock in a corporation organized in Oklahoma, and the next thing I discovered was that my friends over in Delaware had hold of the tail of the cow, while we were pouring the golden stream into her mouth. The corporation said we could not collect an income tax, I think because Delaware had permitted the organization of the corporation to be immune from income taxes in Oklahoma. How was it done? The company owned property in my state. It has a corporation in my state operating that property, but that

corporation is held by a holding company over in Delaware, and when we come to collect taxes these otherwise residents of Oklahoma are basking in the sunshine in Delaware, telling the courts of our state they are immune from our tax laws.

You heard yesterday that our tax should have brought a great revenue. It should—if you get all the lawyers to agree on what you ought to do—but every time one question is settled some other fellow raises another for his client. So, if you are going to write an income tax law in Delaware, Missouri, or where they have none, first consult all the lawyers, find all the loop-holes, and then you may get one you can enforce.

A gentleman stated you could get from the federal government a list of the taxpayers in your state. I have been to Washington twice. I have sat on the steps down there and all I could get was a courteous word of regret that they could not give the list to me. I would like to see this conference take some steps toward assisting states that have an income tax and the others who are going to have; and, as a matter of fact, assisting the United States at this time in the collection of her income tax and in uncovering taxable property—bring about some kind of reciprocity between the United States government and the states in this matter. I walked into the office of the internal revenue collector in August of this year with a bill that I had had passed through the Oklahoma legislature entirely changing the program as to income taxes by writing into that law that the returns could be made public. I offered to the internal revenue collector a list of 7,000, 8,000, or 10,000 taxpayers and companies in my state, and I got no response except that they could not do it.

I believe that it is necessary to uncover property that is not taxed, that there be co-operation between the federal government and the states, and I would like to urge upon the committee of resolutions and those who represent us in Washington that in these times, when the federal government needs all its revenues, that it reciprocate with us. One of the things I object to in government is the duplication of governmental cost throughout this country. The federal government is paying men \$11 and \$12 and expenses a day to hunt up income taxes, whereas if we could reciprocate to any extent that duplication might be avoided.

MR. A. E. JAMES, of New Mexico: I would like to return to the question which Dr. Page raised with reference to the operation of license taxes and particularly license taxes in the South. The gentleman from Mississippi who spoke this morning was evidently very much opposed to the license system. In my limited acquaintance with the South I have found that to be a more or less general sentiment. I believe, however, that there is a great deal to be said on the other side. The South in its license taxes, barring out now any consideration of liquor licenses in the North, is the only section of the country that has any considerable indirect taxation for state and local purposes. Practically all our other taxes are direct, and it is also well to remember that the suggestion from Winnipeg for a tax upon merchants based upon net income is also a suggestion for a direct tax. The fundamental difference between our direct and indirect taxes that we always have to bear in mind is that, properly laid, our indirect tax is shifted and our direct tax is not. In other words, properly laid the merchants' licenses of the South bear upon the consumers unless through the elimination of competition the tax is taken up in the savings resulting from less competition. That is an important consideration and so far as I know there has never been a study of the merchants' licenses of the South to learn their economic effect. I appreciate that a great many of them are very crudely drawn. The Virginia tax is probably placed better than most, being put upon gross purchases, which means that it can be directly translated into terms of an added cost in the goods purchased and subsequently sold. It seems to me that an investigation of the license system of the South to attempt to discover its effect upon mercantile competition, its effect upon prices, its effect upon the whole fabric of mercantile life would be one of the real contributions to the tax literature of this country. At the present time we know practically nothing about it.

My impression is that the states must get away somewhat from direct taxation into the indirect field. It is very possible that in this indirect field of mercantile taxation, falling back more or less upon the consumer, upon the class of people who more and more in the cities do not contribute a dollar of

direct taxes, there is going to be a good and not a bad development; and that out of it we can meet the growing needs for city expenditures without continuing the undue and improper burden upon real estate. It is a growing and serious problem to meet city expenditures without prohibitive tax rates, and it is very possible that in this southern system of mercantile licenses, properly adapted and well considered, planned, and laid, we may find the solution for some of our most pressing city revenue problems. At least it is a matter not to be discarded merely because in a given state it is badly laid, or merely because it is opposed by the people who pay it in the first instance. They may get from it a lot of blessings that they know not of, if they will analyze their own situation.

MR. CHESTER D. BARNES, of Wisconsin: If I may, I would like to say just a word in behalf of the taxpayer. I have never been a member of a tax gathering or tax assessing or tax collecting body in my life, but I have represented taxpayers a good many times and in a good many different states and I think sometimes we are little prone to overlook the fellow who actually pays the taxes. Taxation, it seems to me, is not only a question of getting the money. That is one of the things involved, it is true. But the question of taxation is that of getting the money through an equal contribution of those who are able to pay the money for the purpose of all branches of government. They should be equitably distributed at all times, with one possible exception; that is in the emergency of public peril or such times as we are now having. Great emergency may excuse hasty legislation, but even then it is a problem for the United States government to get the money as equitably as possible. I think you will find that, equitable or inequitable as the present war tax may be, the taxpayers of this country are going to pay this tax without any question at all, without trying to raise any questions of equalities or inequalities. In ordinary times, however, the question of taxation is that of not only getting the money but of getting it equitably.

I believe we have passed the time when local taxation should cut much figure in the national development in this country.

Businesses are not local any more. Business is not done by wards and by cities and by counties, nor even by states. Business is done nationally; that is the fabric upon which the industries of this country are built. Even farmers, though they do not know it perhaps and do not analyze it in their costs, are actually competitors of other farmers located perhaps a thousand miles from them. In business industry there is a direct competition; and business must live. I was much interested in what the gentleman from Oklahoma just said in regard to the income tax question. I live in a state where the income tax has worked out and has worked out well and where the tax commission does get the money.

I have in mind one company which does a manufacturing business in the state of Wisconsin. It pays a tax upon about 95 per cent of the profit it makes. It does business with established places of business in 29 states in the Union. It is not located in the state of Oklahoma and therefore I cannot use that as an illustration, because this is not one of the companies trying to evade my Oklahoma friend's income tax. This company pays the Wisconsin income tax because of the fact that the goods are manufactured and originate in the state of Wisconsin; and yet as a matter of fact not one-twentieth of its total sales are made within the state of Wisconsin; but it pays a tax upon 95 per cent of its income. Let us go over to Massachusetts, where there is an income tax law, and this company has an established place of business there. It pays upon the profit from its entire sales in the state of Massachusetts. Then go over into the state of Utah, and when that state adopts an income tax this company will pay upon a large percentage over there. Next, to Connecticut and the company pays upon a large percentage. Go into every one of our states and a large percentage is paid; and when all the states have an income tax that corporation will not only pay an income tax in the state of Wisconsin upon 95 per cent of its income, but it will pay an income tax in every one of the states in which that company has a location or does business.

In addition to that it pays the franchise tax, it pays a license fee, and it pays an annual tax for the purpose of doing business in 29 different states. These annual taxes or fees are

mostly based upon the amount of capital stock regardless of how great sales or profits may be in each state. In some states it pays upon the gross amount of sales; in some states it does not pay anything at all except the initial fee. The difficulty is that the corporation which is trying to do business in competition with other corporations in different places either has a disadvantage worked against it by virtue of its taxation and the fact that there is no uniformity at all, or else it has an advantage against its competitors because it happens to be located in advantageous places or handles its affairs so skillfully that it escapes many of its taxes through one means or another.

The problem that ought to confront the taxing bodies of the United States is the problem of equality of taxation. I think you will not find anybody who fundamentally objects to paying taxes. Objection is not because a man does not want to pay his taxes; it is because he does not want to pay out of proportion to his neighbor's taxes or he does not want to pay out of proportion to his competitor's taxes. Until we have in the United States a model system of taxation, adopted by all the states, we are going to have the very condition that confronts my friend from Oklahoma, where the corporation seeks to evade or minimize taxes; not because it wants to beat Oklahoma out of the tax, but as a mere matter of self-preservation it has to do something in order not to have duplication upon duplication upon duplication until, unless it is able to avoid taxes, it cannot survive. And, of course, nobody in this room wants to see any business go under. We all want business to survive, and the only way we can get it to survive, in my opinion, is to have some kind of uniformity. It seems to me that is the main problem confronting the National Tax Association.

MR. E. B. HOWARD: The tax to which I referred is strictly a personal income tax. We have no corporation income tax in Oklahoma, and the gentleman mentioned attempts to live in Illinois and not pay an income tax where his resources are, while all of us who live in Oklahoma do pay the tax.

MR. DOUGLAS SUTHERLAND, of Illinois: Let me speak of the point made by Mr. Maxwell, of North Carolina, yesterday, namely, the hint that possibly the situation there might be bettered if the basis of taxation were on a percentage of the full value instead of upon the full value. I think if Mr. Maxwell will look to the history of Illinois, a state which for a good number of years has attempted to work upon a basis of partial value instead of full value, he will at least see the force of the suggestion that the proportional basis instead of the full value basis will not *per se* procure any equality in taxation. For twenty years we have been on the basis, first, of one-fifth of full valuation, and now one-third of full valuation. We went onto that basis because it was found that there were extreme variations between county and county, between one taxing district and another, as to the basis taken for valuation, and it was felt that perhaps one-fifth of the full value would about hit the average.

The first year there was a decided improvement, it is true, especially in personal property valuation, but it did not last long. At present, for example, in Cook County—the largest and richest and most populous county in the state—valuations of land will run about 70 per cent of full value, and then it is divided by three to get the assessed value, but that is not done uniformly. Some land is valued as low as 30 per cent, and then divided by three to get the assessed value. In other counties there is discrepancy when poor farm lands are involved, and in some cases where good farm lands are involved. As far as personal property is involved, as in every state where personal property is taxed by the constitutional rule of uniformity, it runs all the way from 100 per cent full value to zero. Therefore, I do not think there is anything in the history of Illinois along that line that will be helpful or give a ray of hope to any other state.

I would like to say that I represent in a way the taxpayers of Illinois rather than the official government, but I can nevertheless endorse every word that was said by Mr. Wright, our director of finance. We are proud of Governor Lowden, who has put into effect, largely through his forceful personality and organizing abilities, our new scheme of state government.

It is not perfect, but it is a long step in advance and we are very proud that Mr. Wright and his associates in the governor's cabinet are simplifying and greatly increasing the efficiency of our state government.

MR. ROBERT D. ALEXANDER, of Ohio: I was listening to what the gentleman had to say as to the percentages at which they place property for assessment. In Ohio we tried that and after a few years of trial we found that we had property on the duplicate anywhere from 3.5 per cent to 90 per cent of its true value; so we now have a law—and we have had for some years past—that puts all property, both real and personal, on the duplicate at its true value, at 100 per cent. We also have what you call a tax limit law, or one per cent tax law. The rate is limited to one per cent for all purposes except in certain cases where that may be exceeded for special purposes.

A couple of years ago we passed a law to appoint all our assessors. That law proved very unsatisfactory and was repealed. We now have a law enacted a year ago that makes every man his own assessor on personal property, and every man must make his own return of personal property. He must secure his own blank, make his own return, and must swear to it. The plan has proved very successful in Ohio. At the present time we have tabulated returns from 51 out of the 88 counties in Ohio and the increase on personal property returned in the 51 counties has been over \$128,000,000. We are expecting, through this voluntary return system where every man makes his own return in this manner, to increase our personal property duplicate over \$200,000,000. That not only gives us a good return, but the property owner must be satisfied because he is making his own return. It is economical, inasmuch as while we have elected assessors we have practically no use for them, and in many of the counties the auditor calls in the assessors for one day and then dismisses them. The cost of the assessment is a negligible amount in comparison with other years.

I have here a book of instructions that the tax commission issues to auditors of Ohio and I would like to refer to a couple paragraphs on the personal property return. These instruc-

tions were issued to county auditors and assessors for the year 1917.

“Under the new tax law each property owner is responsible for his own personal property tax return. County auditors are required to furnish blanks in the form prescribed by the tax commission of Ohio. They may furnish such blanks either by mailing same to each property owner or by placing them at convenient places in each taxing subdivision and giving notice thereof in one newspaper of general circulation in the county.”

I might say in this regard that some of our county auditors took the directories of our cities or counties and mailed a tax blank to every citizen shown in the directory. Other auditors left these taxing blanks at stores throughout the townships and cities and published a notice to that effect in the newspaper; still others just provided blanks at their office and it was up to the taxpayer to get them.

“It is the duty of each property owner to procure a blank and correctly list all his personal property thereon at the true value thereof in money, answer all questions contained in the blank, swear or affirm to the same, and file it with the county auditor on or before May 1.”

In that blank we have 26 questions that must be answered by the property owner, and the auditor is not permitted to accept the blank unless every question of the 26 is answered.

“The county auditor shall not receive any voluntary return of any property owner unless the same contains a complete statement of his property, with full and specific answers to all questions. The oath may be administered by any assessor, assistant assessor, county auditor, deputy county auditor, mayor, justice of the peace, township clerk, or notary public. Any property owner who fails to file his tax return with the county auditor by May 1 shall forfeit his right to the \$100 exemption.”

The property owner is allowed \$100 exemption. If a man has only \$100 he is compelled to make a return and is then allowed exemption.

“If the property owner refuses to make oath or affirm to his voluntary return filed with the county auditor, the latter shall add 50 per cent penalty to the amount returned.”

If the auditor finds that somebody has not returned his

property he can either make the return himself or send out some one from his office to do it, and then add 50 per cent penalty to the amount.

This is the Ohio plan as we now have it and it is proving very successful in our state.

MR. GEORGE P. PELL, of North Carolina: The statement of the gentleman from Ohio increases my faith. The statement by him that they assess property at its true value in money there and rely upon the taxpayer himself to make a true return of his personalty makes me feel that the day of the millennium is about nigh. I believe this whole convention would be under lasting obligations to this gentleman from Ohio if he would give us the secret method by which he makes the taxpayers of Ohio return their personal property at its full value, and how he ever gets the farm lands up to their full value in money. If he can explain that I think we might adjourn and go home, for it will be as big a thing as we could possibly learn.

MR. ROBERT D. ALEXANDER: Our farm lands in Ohio are not assessed through voluntary returns. The county auditor of each county is made the assessing official on real estate and his assessments are subject to review by the state tax commission. This official is elected and his assessment of the property is subject to revision by the state commission.

So far as personal property is concerned, we have used no coercion or influence at all to get these returns, but every man is given to understand that it is up to him, and to him personally, to stand by whatever return he makes. It has been our experience that the type of assessors that have been elected in Ohio proved a very poor lot. With the personal property return the owner, if he had any trouble, would rely on his ability to blame it on the assessor in some way or other. But we have put it squarely up to the owner now and he makes his own return and he swears to his own return, and if he is called up for an incorrect return there is nobody standing between his own self and the bar of judgment. We find there are few men in Ohio who are willing to take the chance of being put in that light in the community.

We have used no influence on taxpayers and we are very much surprised ourselves with the returns made. Persons who never before made any personal property return have done so, and persons who made personal property returns in many cases said, when they found they must swear to them: "Before I swear to that you better add \$10,000 of my cash"; or, "You better add such an amount of bonds and stocks". In 90 per cent of the cases in Ohio the assessors would not swear a man. They would take his paper but not actually swear him. The change has been very satisfactory and very successful and this year will add over \$200,000,000 to our duplicates in Ohio.

Our rate of taxation is limited to one per cent. That includes the state, county, school, township, and village tax. There was some talk this afternoon about limiting the expenditure of public funds. In Ohio the state, the counties, the townships, school districts, cities, and villages, and every spending body must every six months make an appropriation of the estimated funds to come into their hands, and the appropriations of those funds must absolutely govern their expenditures for the following six months. They cannot legally spend or contract any debt in excess of the appropriations for each specific purpose; and that applies to all taxing districts and all public bodies.

FIFTH SESSION

WEDNESDAY EVENING, NOVEMBER 14, 1917

CHAIRMAN—HUGH M. DORSEY, GEORGIA

NATIONAL PROBLEMS

1. WAR FINANCE

**Charles J. Bullock, Professor of Economics, Harvard
University, Cambridge, Massachusetts**

2. AMERICAN IDEALS OF LIBERTY AND DEMOCRACY AS TESTED BY THE PRESENT WAR

**M. Ashby Jones, representing the National Security
League, Atlanta, Georgia**

WAR FINANCE

CHARLES J. BULLOCK

Professor of Economics, Harvard University, Cambridge, Massachusetts

Your Excellency, Members of the National Tax Association, Ladies and Gentlemen: I come here this evening as a substitute for Professor Seligman who, greatly to the regret of all of us, found himself unable to visit Atlanta or to complete and send to us the valuable paper that he had in preparation. My subject is somewhat dry and technical, and therefore difficult to present to an audience composed in considerable part of those who are not specialists in the field of taxation and so are not interested in the technical questions of war revenue and finance. I shall endeavor not to discuss how under ideal conditions this great war might have been financed, but shall try to explain how we are undertaking to finance it and what the reasons and considerations are upon which our financial policies have been based. I shall hope that you will not infer from anything that I say that my general attitude toward the financial policy of the government is a critical one. I shall, indeed, at some points venture to criticize, not because I desire to do so, but because it appears to me important that upon these points public opinion should be informed in order that mistaken policies may, if possible, be corrected. But in general I wish to say at the outset, in order to avoid misunderstanding, that taking things by and large the financial preparations for this greatest of wars are proceeding as well as are upon the whole our military preparations.

In laying down a program of finance for any war the only safe principle on which to proceed is that no man can ever say how long any war will continue or just how far it will lead. War is a very uncertain venture and the only prudent thing for a nation to do in adopting a program of war finance is to prepare for a contest of unlimited magnitude and indefinite duration. Therefore, it is necessary for the United States to look far ahead in adopting financial measures, to follow at

every point a far-sighted policy. This means, for instance, that it is less important just how any particular matter is provided for in the first year of the war than it is what provision we shall be able to make for that same matter in the second year of the war, and the third.

Not only should all our plans contemplate a war of long duration, but they must also be commensurate with the enormous magnitude of the task at hand. Last spring you will recall that the first estimates submitted to Congress by the secretary of the treasury contemplated an expenditure of something like \$5,000,000,000 during the current fiscal year. In less than two months those estimates were raised to \$10,000,000,000, and by this fall it is already apparent that the government should prepare for the expenditure of no less than \$18,000,000,000 during the current fiscal year. It may indeed prove that so much money will not need to be spent before the first day of next July. But if so, our government will be more fortunate than governments usually are in similar cases. We must assume, then, in all our discussions of the present financial problems that we must finance during the current year a war expenditure of \$18,000,000,000.

Before such a figure as this one's grasp of figures is likely to fail. Perhaps it will make the immensity of our contemplated expenditure clearer to you if I suggest that an expenditure of \$1,000,000,000 would represent an expenditure of \$1.00 a minute from the beginning of the Christian era down to the present time; that an expenditure of \$3,000,000,000 would represent approximately an expenditure of \$1.00 per minute from the beginning of recorded history; and that an expenditure of \$18,000,000,000, such as we now face, represents no less a sum than an outlay of \$6.00 per minute from the beginning of recorded history down to the year 1919.

Now, all other considerations connected with the financing of the war need to be subordinated to these two controlling considerations, a financial task of unprecedented magnitude, and one that may be of very considerable duration. In any question that we have to decide we should give these considerations the right of way. We must raise \$18,000,000,000 this year; we must be prepared to raise \$18,000,000,000 the next year, and perhaps the next, and the next.

The question that has been most considered in popular discussions of the financing of the war is that of the proper proportions to be observed in the use of loans and of taxes. Public debts as we now know them are the invention of the last three hundred years, and from the origin of the modern practice of public borrowing until comparatively recent times the commonly accepted theory has been that in time of war it is proper to borrow the whole of the extraordinary expenditure and to levy taxes sufficient in amount merely to cover the ordinary outlay of the peace establishment and to pay interest upon the public loans; and perhaps, though this is often regarded as a counsel of perfection, to provide even from the beginning of the loan for the gradual extinction of the principal.

That was the theory upon which former wars of this country were financed. Its shortcomings in actual operation very early become evident in any protracted contest. When a government undertakes to borrow the whole of the extraordinary outlay and increases but slightly its revenues from taxation, it makes a heavy draft upon its credit and it does not offer its creditors very good security. The security of the creditor is the tax revenue of the government; the more ready and willing the government is to increase its revenues from taxation to meet a part of the war expenditure, the more willing the creditor is to advance funds to the government, and the better the credit of the government will be. In any protracted struggle the attempt to finance a war wholly by loans and to confine taxation merely to an amount that will meet the interest on loans has always spelled financial disaster.

In view of the shortcomings of that policy it is not strange that in the present discussion of war finance there have appeared extremists who have gone to the other extreme and have said that public loans are wholly bad and that they should be wholly avoided. Last spring there was a very considerable party in Congress—I do not mean political party but a very considerable body of representatives of both political parties—who were inclined to insist that this war, except for the first few months, should be financed wholly by taxation, and that loans should not be employed except during the

initial months of the struggle. Thus the human mind tends always to gravitate from one extreme to the other. That policy of total avoidance of loans and financing the war wholly from taxation was ordinarily called the policy of conscription of wealth; and about it I want to offer a few remarks.

The word "conscription" was obviously unwisely chosen. Conscription means nothing but compulsory enrollment. Taxation is always conscription, and when you levy taxes you levy upon wealth and you cannot levy upon anything else. Conscription of wealth, when you analyze it, means nothing but taxation of wealth, the only thing you can tax in any event. The term had an attractive sound. We were conscripting men and it was said we must conscript wealth. But by wealth was not meant wealth in the ordinary sense of the word. It meant that the war should be financed by levying upon the incomes of the wealthy, and it was said that we should conscript or confiscate the large incomes, say in excess of \$100,000, and the whole of the profits of any firm or corporation that could be said to result from the war. That policy, it was strenuously urged, was the only fair policy. If we conscript men, why not conscript wealth? If we oblige men to go to the front, why not oblige the dollars to go to the treasury? In that way it was contended that the only policy which would preserve equality in the treatment of dollars and of men was the immediate conscription of wealth.

But when you come to analyze the matter carefully it will be evident that you cannot procure equality in the distribution of the burdens of the war by conscription of wealth as thus defined. It is not true that the men who go to the trenches are the poor and only the poor, and that the men who stay at home and pay the taxes are the wealthy and only the wealthy. Very fortunately we are running the military side of the war upon the only fair and democratic basis, that of compulsory service, and we make no distinction between rich and poor. If any one thing is certain in this war, the rich in proportion to their numbers are going to do their proportion of the fighting. The young man of well-to-do family who, being of military age, manages through any pretext whatever to avoid

military service is doing something that he will rue and rue bitterly to the last day of his life. Such a man would better go down to the river or harbor and jump off the first dock than undertake to face the sentiment of his own community and his own associates in the community that he will have to face to the end of his days. In proportion to their numbers the rich are doing their share of the fighting. And those who stay at home—are they only the rich? Are not many people who are not well-to-do going to stay at home? How, then, can you secure equality by conscripting wealth? With the well-to-do who go to the front you conscript their service and wealth; with the poor not of military age or military capacity who stay at home you will conscript neither their wages nor their services. You secure no equality by the policy of the conscription of wealth. In point of fact, the attempt in this case to secure equality between things like human life and wealth, which are essentially disparate and incommensurable, is based upon false reasoning, and has been most unfortunate in its effect upon discussions of war finance.

I pass to the correct theory of financing a great war. The theory that would be accepted by any careful student of public finance in the United States is that, with a government as with an individual, it is always better to keep out of debt when you can. With the credit of the government it is exactly as it is with the credit of an individual. The less credit is used, the stronger the financial position of the government. The more the war can be financed by taxation the sounder and more secure our finances are. Therefore, the only policy to be followed is the same rule of prudence that would govern an individual, to pay as you go so far as you can, and only when such a policy begins to produce too much disturbance of conditions, then employ your credit. That means that this government should finance this war so far as practicable by taxation, and should use loans to supplement taxation as much as may be necessary; and it means that, since the war may be a long one, our taxing policy should be a far-sighted one which will not injure business, not disturb the sources of next year's revenue, and not jeopardize the financing of the subsequent years of the war. This is em-

phatically not the time for reckless experiments; it is emphatically the time to tax as far as we safely can without disturbing too much the business of the country and drying up the sources of future revenue.

We need, in fact, to use both bonds and taxes, and there is no magical proportion governing the use of the two sources of revenue. When our president last spring suggested that we should undertake to raise one-half our revenue by taxation, he then probably contemplated an expenditure of some \$5,000,000,000, and for such an expenditure the proportion of one-half would have been perfectly safe. But for an expenditure of \$18,000,000,000 a proportion of one-half is probably impossible. Certainly no one with a reputation to lose as an authority on public finance would want to express the opinion that it is possible during the current fiscal year to raise \$9,000,000,000 from taxation. There is no magical proportion. With an expenditure of \$18,000,000,000 we can simply say that we should raise as much as we can by taxation and we must borrow the rest.

In the issue of bonds, the next subject to which I shall advert, we come to a very interesting and important theme, upon which I might talk for the rest of the session. I shall be obliged to confine myself to two or three of the most important points concerning the issue of government loans. In the first place, just a word about the rate of interest the government pays. Our government in its entire history has usually committed the error of trying to pay something less than the going rate of interest upon its obligations. It is perfectly true that when Uncle Sam puts out his I. O. U. he offers investors a security of the greatest solidity and of very great value. If he were to put out only \$100,000,000 of such securities he might raise money at two per cent or less; but when he puts out \$2,000,000,000 and follows that up with \$5,000,000,000 more, promising to come back with a request for four or five more in the spring, the situation changes. He makes a tremendous demand upon the money market, and if he is wise he will submit to having his credit judged by the ordinary commercial tests. If he does so he will secure a better rate than other borrowers who can offer less security, but he will not secure a rate of three per cent.

Our government has in such a situation as we now face undertaken to float its bonds for something less than the rate that it really ought to offer in order to carry the issues off the market quickly. That would not be a serious matter if our government got away with its undertaking. We would be glad under those conditions that Uncle Samuel had done so well. But in point of fact Uncle Samuel does not get away with the proposition. In order to put out his bonds at a rate of interest that is artificially low, he exempts them from taxation. In former times, before we had a progressive income tax, the government lost no money by exempting a government bond from taxation. If it levied an income tax at a proportional rate of five or 10 per cent, the selling value of the bond would be enhanced by an amount that would fairly represent the tax which the government had forgone. But we have at the present juncture, however, not a proportional but a progressive income tax. The 3.5 per cent bonds issued last spring exempt the man subject only to the normal tax from a tax of four per cent, and the price of the bond is not enhanced by the amount of exemption secured by persons having large incomes subject to the very heavy supertax.

It would have been very fortunate last spring if our government had seen its way clear to issue bonds subject to taxation, enjoying no exemption of any description whatsoever, and had then been willing to go into the market and pay the current rate of interest. It would actually have meant money in the treasury in the long run. And it would also have avoided the unfortunate result of creating in the community a class of people who, in accordance with the terms of their contract made with the government, are exempted from ordinary taxation. Just at present this difficulty does not impress us as very important. It seems more important to get the bonds sold, and it seems not to matter so much how they are marketed. But after the war if any politician, seeking to array one class against another class, points out that there are in the community millionaire bond holders who are exempt from the income tax, you want to remember that Uncle Samuel is responsible and that the millionaire bond holders are not to blame. They merely took the government at its own terms;

and the mistake which the government made was trying to place its bonds at a lower rate of interest than it ought to have paid. It would have been vastly better to have issued a five per cent bond without any exemption from taxation; and if that bond did not go, it would have been better to make the rate six per cent.

When you stop to think of it, it is not particularly important to the government what rate of interest it pays during an emergency. If the government is wise enough to make the terms of the bond issue subject to its control, is wise enough to provide that within a certain period following the conclusion of the war it may convert those bonds, that is, may call them in and pay them off in case it can then borrow at a better rate of interest, it makes very little difference whether during the years of the war it pays four per cent or five or six. The important thing is to offer a rate that shall not create exemption from taxation, that shall in spite of the fact that the bonds are taxable carry them off the market; and then, having done that, reserve to the government the right to begin the redemption of those bonds within a short period after the close of the war, when, the government's circumstances having improved and its credit being better than it can be in time of such emergency, it is fair to presume that it can then replace war bonds by others running for a longer period and bearing a lower rate of interest. The government is like a man with a note to pay on a certain day, non-payment of which means bankruptcy. That man has very little concern with what he pays for the accommodation for a brief time, if there is a prospect that his credit is presently going to be better.

One other suggestion about the bonds. Very fortunately the government has undertaken to place them by popular subscription. By so doing it offers the people of the United States the best opportunity that they have ever had for saving small sums out of wages and small salaries. We have had a great deal of talk about war economy, but we have had so far very little real economy, except in the matter of saving for the purchase of liberty bonds. The government ought to see to it that without any delay something is done to organize in

every community throughout the land organizations of wage earners and salaried people and others to save money for liberty bonds. Our meatless days and our wheatless days and our other war economies we talk so much about have not yet taken very deep hold upon the rank and file of the American people. Many of us are finding that war economy in the dining room means real war out in the kitchen where its practice is not understood. Our war bonds probably offer our people at the present juncture about the most effective means of encouraging and enforcing war economy; and we should realize that and undertake to systematize and universalize the practice of saving for the purchase of liberty bonds. So much for the bond question; and now I come to the matter of taxation.

When one examines the tax policy of the government in the present war the first thing that impresses him is that we have so far made extraordinarily little use of what is ordinarily called indirect taxation. The effort of Congress has obviously been to rely as largely as possible upon direct taxation and to minimize the use of indirect taxes. Even articles of voluntary consumption, even things that are, at least in war times, luxuries, like coffee and tobacco and tea, are not being made to pay what they perfectly well might be made to yield. The policy of Congress is not to be severely criticized. The country undoubtedly was not in a mood to accept a great extension of indirect taxation this year, and Congress gauged accurately the wishes of its constituents. It probably could not have acted otherwise.

But now looking ahead, it is safe to say that if the war lasts two years and we have to levy more taxes, the next time we shall see a greater use of indirect taxation. In fact, there is danger that this year, in the large use made of direct taxation, Congress overdid that form of tax levy. The direct taxes which Congress has imposed, as you all know, are principally those upon estates passing by inheritance or bequest, those upon munition makers, those upon excess profits, and the increased rates added to the federal income tax. The federal estate tax I shall say nothing about. All members of the tax association realize that the coming of that federal tax

raises difficult questions for the states which hitherto had in ordinary times made use of that source of revenue.

The tax on munition makers will make an interesting theme for the future historian of the war. It was levied before we got into the struggle, at a time when there was more or less talk about our wicked munition makers who had been manufacturing shells and sending them over to the Allies and had been coining money out of the terrible struggle in Europe. And this sentiment about munition makers had been assiduously fanned by agents of the German government, both official and unofficial, whom we had among us in such number. The act of Congress imposing this tax was enacted before we got into the war and it expressed a certain feeling that our munition makers ought not to have been in that business. In point of fact, it is very fortunate for the country that, having got into the war, we have, at least in this direction, a certain measure of preparedness. We have fortunately for the first time in our history factories ready to turn out large numbers of rifles, cannon, shells, and other munitions; and it is further perfectly evident, and will not escape the notice of the future historian, that every shell sent over to the French or British by our munition makers prior to the first day of April, 1917, which found the mark at which it was directed, diminished by just so much the work that our own boys will have to do when they get into action. And yet we have the special tax upon munition makers, who were singled out as an undesirable industry and had the misfortune to bring down upon themselves the wrath of the official and unofficial agents of the imperial German government.

About the excess profits tax I can say very little in the time that remains at my disposal. It was the sort of tax that Congress was bound to enact, and could not possibly avoid. There was a strong demand that profits made out of the war should be very heavily taxed, and back of that demand was a very natural feeling that it is not right, when the country is at war, that some people should coin pecuniary profit out of it. With that feeling we all sympathize. The only difficulty is in finding the way of drawing an excess profits tax that will do the thing that you want to do.

There are two ways of levying such taxes; the first is the way followed by Great Britain. This is to determine the profits made by firms and corporations and individuals in the period just before the war, then determine the extra profits during the war above the amount made prior to the war, and then levy upon the excess profits of the war period a heavy tax. That is the way the finance committee of the senate amended the bill, and when they reported it in the senate it was immediately discovered that under that plan some very large corporations which had made very good profits before the war were going to pay a very small excess profits tax, while it was also evident that some other corporations, not large, but of small or moderate size, whose profits had grown not because of the war but in spite of the war, were going to pay a very heavy tax; and therefore the bill was subsequently recast. In its present form our tax is like the Canadian excess profits tax. It levies a tax upon profits in excess of a certain percentage, a varying percentage of from seven to nine per cent of the capital invested in the business. That looked excellent when it was passed, but it does not look so easy today, now that the experts and the internal revenue department are working it out. It makes the tax depend not upon the actual amount of the profits, but upon the relation that amount bears to the capital invested in the industry.

The makers of the law overlooked, generally speaking, that the high rates of profit are not found in the large industries but are found in the successful industries of small and moderate size engaged in what we call specialties and run by men of brains and enterprise and courage. Our \$100,000,000 corporations do not make profits that are measured by several hundred per cent. It is the smaller concerns that do that. If ever there was a tax so drawn as to hit the little fellow and to temper the wind to the big fellow, it is this same excess profits tax; and the little fellow is hit and the big fellow is not hit, irrespective of whether the amount of his profits is affected by the war. Some of the cases arising are so peculiar as to be almost humorous, except to the victim. I learned of one case only as I came down to Atlanta. It is that of a concern which had this year a capital of \$1,000,000. Its capital before the

war was very small. It has been engaged in making a war specialty and has made huge profits, and substantially all those profits have gone back into the business. Today the concern has an enlarged plant, it has a tremendous inventory, and it may have some debts. It also has an excess profits tax to pay to the government next spring which, as nearly as it can figure out, amounts to \$540,000, and that excess profits tax is in addition to all its other taxes.

The men who drew this law assumed that a concern that has made large profits has a lot of money in the bank and can perfectly well pay a very heavy tax. In point of fact, in times like these the rising prices of materials require more money to carry on the business. The tremendous increase of the demand for your product requires you to put your profits back into buildings or materials, and in many cases it is not easy to get the money with which to pay heavy taxes. Under this tax a large number of concerns will be obliged to resort to the banks for the wherewithal to pay the tax on their excess profits.

I pass over other features of the government's financial policy. I have been critical of the excess profits tax, but not of the purpose that led to its enactment. Of the changes in the income tax I have no time to speak. I have been critical in part, but after all in the main our government has done well. I have criticized certain points in the policy relating to loans and taxes because these are matters susceptible of correction and we ought to be thinking about them.

AMERICAN IDEALS OF LIBERTY AND DEMOCRACY AS TESTED BY THE PRESENT WAR

M. ASHBY JONES

Atlanta, Georgia

To be here in the midst of gentlemen who are discussing with seriousness the question of taxation makes me feel quite out of place. I know nothing in the world about taxes, either on property or on wheels. Yet it is said that the easiest subject in the world to speak on is one which you know nothing about. Then you are not limited by the facts and can lend yourself to the freedom of your fancy. I am frank to say that I was greatly comforted, after hearing the learned gentleman from Harvard discuss for some time the emergency war taxation, to have him admit that while it was pretty nearly all wrong he did not know what to do about making it right. It was such a familiar conclusion of my own. When he dealt in those figures of speech—I have learned to say millions and billions, too, without knowing at all what they mean—I was reminded of the ex-secretary of the treasury of the Confederacy. At a dinner given him in London after the war, he was asked what was the total debt of the Confederate States. He replied with an air of indifference, "It was \$100,000,000 or \$100,000,000,000, I have really forgotten which."

Yet there is one profound impression which comes to me in this very discussion. While we are talking in terms of tens of billions with which to purchase limitless supplies of tonnage of material resources, there comes to my soul a profound pride, a genuine ecstasy of spirit, when I remember that we are gathering this vast weight of material, not to fight for anything that can be measured or marketed, but that it is being marshaled and mustered into the service of an army which is to fight only for the spiritual ideals of America.

I may be justified in speaking this evening if it is clearly understood that there is not even the suggestion that I am attempting to say anything new. But I do believe that, now

and again, it is well for us to pause and look back upon the panorama of great events which have led up to this present hour, and thus strive to gain a truer perspective, a fairer and better conception of the great task which confronts us. Many have said in recent days that it was a pity we did not do in 1914 what we finally had to do in 1917. My answer is that while we might have declared war on Germany in 1914, and with some justification, that not until 1917 could we have done so with the same clear judgment and conscience. For 1914 can only be understood in the light of the experience of the three succeeding years. Who outside of the sacred circle of the imperial councils understood that when the armies of Germany crossed the Belgian border it was intended not simply as a drive on Paris, but Pan-Germanism had started round the world? Those who hold that we should have entered this war primarily in defense of the neutrality of Belgium would, it seems to me, have committed us to an utterly impossible international policy. Up to 1914 there were more or less definitely understood spheres of national influence and obligation.

We had for many years understood our own sphere in what we had termed the Monroe doctrine. Then the Spanish-American War stretched our interests and obligations to include certain oriental questions and problems. But it was well understood that no one nation could assume the moral obligation to police the world. Even when our sensitive sympathies were shocked beyond expression by the Turkish atrocities among the Armenians, we did not feel a national responsibility and followed our traditional policy of non-interference in European conditions. Lord Grey in July, 1914, voiced this well understood international principle when he said, "It would be absurd for England to go to war on account of Serbia." So that when Germany crossed the Belgian frontier we thought, and rightly thought according to the evidence at hand, that the war was to be a European conflict, and that the parties to the treaty to guarantee the neutrality of Belgium were alone responsible for the fulfilment of their sacred promises. Thus when the war began it seemed easy to analyze. Serbia fought for its very national existence. Russia entered

because of its vital Balkan interests. France joined to keep faith with her ally. Belgium fought because she would rather have died than live among the nations without honor. England was in honor bound to guarantee the neutrality of Belgium, and at the same time her national life was threatened.

But why did Germany fight? When she crossed the Belgian frontier she revealed with brutal frankness a callous indifference to her treaty obligations which amazed the world, and her march across that ill-fated land was an exhibition of calculated cruelty hitherto unknown in the annals of civilized warfare; and yet the deeper purposes of her invasion were not yet revealed to the world. Then followed the unprecedented depredations of the submarines upon the commerce of the world and civilization awakened to the fact that Germany was not only careless of all the civilized conventions in her prosecution of war with her belligerents but that she was careless of the rights of neutrals as well. And yet, we could not bring ourselves to believe the full truth. I think Mr. Wilson voiced the feelings of mankind when he wrote, "I cannot believe that the Imperial German Government will deliberately disregard the rights of humanity and the standards of civilization." But in the discussions which followed we were amazed to find that Germany not only "disregarded the rights of humanity and the standards of civilization", but that her official utterances actually defended in politico-ethical language the murder of unarmed men and defenseless women and children upon the free seas of the world.

Then, dazed and still hesitating to accept this new definition of the German mind, we turned to a renewed study of German literature in the light of current German history. Some of us had in other days loved to follow the intellectual leading of the great German thinkers of the seventeenth and early eighteenth centuries. And now, as we turned again to trace the development of the ideas of these great masters in modern German life, we found that the political hand of Prussia had seized the universities and had for half a century been molding the thought of Germany into a political philosophy fitted to fulfil the ambitions of her ruling class. From the mystical agnosticism of Kant, whose God was veiled in

reverence behind his "categorical imperative", there had gradually evolved a god whose mailed hand parted the curtain and step by step descended to take his seat upon the throne of the German Empire. Then it was that we came to understand that German might proposed to rule the world by divine right. This political philosophy was no mere academic theory current among a limited class of intellectuals. Prussian prudence had sown this seed in the very heart of its government-controlled educational system. All the way from the tiny tots of the kindergarten to the maturity of the university the subtly developing idea gradually permeated the growing generations of German children that the individual existed for the state and that the state was divine. Thus a whole nation was bred to believe that to serve German might is to serve divine right.

Then it was revealed to us in all its crude simplicity the meaning of Pan-Germanism, "Germany over all". Germany over Belgium crushing homes and hearts into blood-stained dust is horrible enough. But a German god with his iron heel upon the brains of men is the real picture of Pan-Germanism. For a Prussian victory would mean nothing less than the conquest of the intellect and conscience of civilization. Nor were we left to surmise that at some dim and distant day they might attempt to translate this political philosophy into practical accomplishment. While we were yet at peace with the German government—while her ambassador was enjoying the freedom of our hospitality and speaking for the foreign office honeyed words of diplomatic goodwill—it was discovered that the whole organization of German diplomacy was secretly attempting to arouse and organize the racial prejudices and national selfishness of Latin America and Japan to assault us in the back.

If the violation of Belgium had been the temporary triumph of a political faction; if the useless burning of homes and churches, the murder of unarmed civilians, the raping of women, and the mutilation of children had been the temporary insanity of undisciplined troops; if the submarine assassination of the *Lusitania*, with its kindred massacres at sea, had been the acts of individual men whose unleashed brutality

had sprung from the hearts of individual criminals; if the torpedoing of hospital ships and the bombing of schools and orphanages had been the sporadic acts of unauthorized men, the world would have recorded this German war as an abnormal nightmare and have learned finally to forget it. But the ineradicable truth has been burned into the memories of men that for three generations the German autocracy has been poisoning the minds, paralyzing the consciences, and training with technical skill the demoralized brains and hands of a whole nation to violate the most sacred sentiments and destroy the most precious possessions of the spiritual wealth of humanity. It was not the provoked passion of an hour nor the mad mood of a mob. It was a prearranged plan. It was nothing less than a Potsdam plot to assassinate the liberties of a world.

Then there rang out around the world, like an alarm at midnight, the voice of our President, "The world is not safe for democracy". Is not that a fair statement of the truth? And the great task which now confronts us, is it not—whatever may be its cost in sacrifice—to make this world safe for democracy? I think of democracy as a government through which the people may find a free expression for the faculties and forces with which God has endowed them; which gives each man a fair and equal chance to develop the image of the Creator in whose likeness he was made; a government whose fundamental creed is its faith in the supreme value of a man. Such a government is not an end within itself, but a means toward the supreme end, which is the development of an efficient manhood. This means a free ballot, a free press, a free school, and a free church. Such a democracy demands peace for the fulfilment of its highest ideals. It needs the unhampered opportunity for the full tide of all the thought and activities of all the people to be directed and concentrated upon the constructive work of civilization. Each man is to be freed to follow the pathway of his personality, and reach the goal of his destiny marked out by his peculiar fitness and temperament.

War from its very nature is an enemy to democracy. Its very purpose and spirit reach out in conscriptive force and

seize all the accumulated experience, knowledge, taste, and ambitions of the people and dragoon them into the service of destruction. The artist must leave his picture, the artisan his task, the architect his plan, the merchant his store, the scholar his library, the son and husband the home, and all the dreams and deeds which with infinite variety have gone to make up that composite picture of beauty which we call civilization are now molded into a monotony of purpose to destroy what men have hitherto builded. The war idea is a psychic tyrant dominating the entire thought world, drafting the inventive genius and the artistic temperament, and so monopolizing the daily mental experiences of men as to greatly impoverish the intellectual life of the race. Even the threat of war is a disturbing influence to the peaceful processes of civilization, and thus a menace to the highest efficiency of democracy. For if democracy must clutch a sword in one hand, it has only one hand with which to perform its legitimate tasks, while half its power is prostituted to preparedness for war. Just a war cloud on the horizon—no bigger than a man's hand it may be maintained, but with the forefinger of that hand pointing to "the day"—has distracted the attention of the world for the past forty years. At critical intervals the rattling of the sabre in Central Europe has gotten on the nerves of mankind, and no man can tell the enormous cost to civilization. The simple truth is now as clear as daylight. Not since 1914, but ever since Bismarck began to weld the German people into a sword the German Empire has been a threat and a menace to the democracies of the world.

Democracies have never initiated an aggressive war. For it is to the advantage of only the few to fight, and ever to the disadvantage of the many. Were it left to the great masses of men to initiate war in the world, we might beat our swords into ploughshares and return to our great constructive tasks confident of a permanent peace. War is necessary to the continuance of the life of autocracies; peace is the very breath of democracies. And we know now as we have never known before that, as Mr. Lincoln said of this nation, it "cannot remain half slave and half free", it is equally true that this world cannot remain half slave and half free, for autocracy

and democracy are irreconcilable enemies in the life of mankind. If, then, democracy is to live and develop, bringing forth its richest fruitage in the minds and characters of men, we must have peace, an enduring peace, free and unfettered by even the threat of tyranny.

The splendid paradox that fronts us is that we must fight for a world peace, which means nothing less, eventually, than a racial freedom. The task seems to me to be infinitely greater and more significant than the beating of a great people into an impotent, sullen non-resistance — a shorn Samson sulking in restrained hatred until his locks have grown, when once again with blind fury he may lay hold of the pillars of the temple of civilization and drag it to destruction. Better than that picture is one of the significant scenes from the life of the Galilean. They have brought to him a poor devil-posessed youth, chained into helplessness. As he stands foaming at the mouth in impotent rage, they tell the story of what a scourge he has been to the community. Then there was the transforming power of the Man among men, and when the parents of the boy arrive, they find him "clothed and in his right mind, sitting at the feet of Jesus". Yes, the titanic task of democracy is nothing less than to cast out of Germany this devil of Prussian autocracy and then to welcome back into the familyhood of the nations a democratized German people.

We enter a great struggle for a supremely high purpose. God grant that our spirit may match the purpose. We must fight, fight hard, fight intelligently, glad "that the day is come when America is privileged to spend her blood and power for the principles which gave her birth". But in this fight we must keep our heads clear and our hearts clean of hatred. We must beware of the Prussian contagion which has made brutality an epidemic in Central Europe. Beware of the day when it might be possible to conquer the body and surrender to the spirit of Prussia. With this high and holy purpose in our hearts, we may enter this war with the faith and passion of a crusade; for

"He's true to God who's true to man. Where'er a wrong is done,
To the humblest or the weakest 'neath the all-beholding sun,
That wrong is done to you and me, and he's a slave most base
Whose sense of right is for himself and not the human race."

SIXTH SESSION

THURSDAY MORNING, NOVEMBER 15, 1917

CHAIRMAN—A. S. DUDLEY, WISCONSIN

- 1. THE FARMERS' MOVEMENT IN NORTH DAKOTA AND TAXATION**
Frank E. Packard, Member State Tax Commission,
Bismarck, North Dakota
- 2. RECENT EVENTS IN TAXATION IN KENTUCKY**
Hite H. Huffaker, Chairman Special Tax Commission,
Louisville, Kentucky
- 3. PROGRESS REPORT OF THE COMMITTEE ON A MODEL SYSTEM**
OF TAXATION
Charles J. Bullock, Professor of Economics, Harvard
University, Cambridge, Massachusetts
- 4. THE TAXATION OF BUSINESS**
Thomas S. Adams, Professor of Political Economy,
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Tokyo, Japan

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THE FARMERS' MOVEMENT IN NORTH DAKOTA AND TAXATION

FRANK E. PACKARD

Member State Tax Commission, Bismarck, North Dakota

The history of the farmers' movement in North Dakota is the world-old story of class struggle for economic advantage. North Dakota is almost altogether a one-crop state, as is shown by the fact that in 1915 we produced 155,000,000 bushels of spring wheat. A community limited to one crop or commodity is a peculiarly inviting field to the market jobber, speculator, and monopolist. The state has suffered all the ills to which a one-crop community is heir, and wheat marketing conditions, in both local and terminal markets, have been bad during all the years since the settlement of the northwest. Many attempts have been made to remedy these conditions, chief of which has been the local elevator, owned and operated by farmers. Of the 2,180 local elevators in the state, 520 are so owned and operated. While they have a tendency to stabilize the local market, and narrow the spread between the local and terminal markets, they have been found wanting as a cure-all for marketing conditions.

For many years it has been the judgment of students of marketing conditions, from the viewpoint of the farmer, that the control of the local market availed little, in the absence of the abatement of the abuses of the terminal market. This belief became so general ten years ago that an agitation was commenced for state-owned terminal elevators, either at Duluth, Minneapolis, or St. Paul, Minnesota, or at Superior, Wisconsin. This agitation resulted in the passage of two constitutional amendments: in 1913, one providing for terminal elevators outside the state; and the other, in 1915, for terminal elevators within the state. These amendments were adopted by almost unanimous votes. A direct levy was made by the 1913 legislative assembly to provide funds for their erection—to be located where the legislature might direct. In

1915 the farmers of the state moved on the legislative assembly to secure the enactment of a law which would make the state-owned terminal elevators a reality. Literally, in the presence of hundreds of farmers, the legislative assembly rejected the terminal elevator bill, and as the farmers of the state vehemently declare, told them "to go home and slop the hogs". The war was on.

A. C. Townley, who had been a large-scale farmer in the western part of the state, was present at the farmers' Waterloo in 1915. He had been a close student of the financial problems of the farmer for a number of years, and was ready with a carefully considered plan for organization. The evening following the rejection of the terminal elevator bill, he deemed the logical time had arrived to inaugurate it, and he assembled about a dozen representative farmers from different sections of the state in a room in a local hotel and laid his plans before them. His theory was that the various co-operative farmers' organizations were too disconnected and isolated to secure the legislation necessary to remedy the ills of which they complained. Moreover, they did not go far enough as economic and co-operative organizations. He proposed to weld them all into one and to inaugurate a nonpartisan movement to influence the already existing political parties; it must be exclusively a farmers' organization, excluding other laborers, business and professional men, and instead of maintaining party machinery and nominating candidates for office it must select and endorse candidates already in the field, who would pledge themselves to carry out its program. The plan was endorsed and those present enrolled as members. From this meeting Mr. Townley went to Minot and interested two or three wealthy and influential farmers in that section, securing sufficient funds to purchase an automobile. This was in March, 1915, and at the time of the primaries in June, 1916, or in 15 months, Mr. Townley's idea had so far succeeded that there were in the neighborhood of 100 organizers in the state busily enrolling members. The Farmers' Nonpartisan League, as it had been named, owned some 80 automobiles, a first-class printing and stereotyping plant, and was publishing a periodical with 50,000 circulation and had an enrolled membership of 40,000.

Today the Farmers' Nonpartisan National League maintains elaborate headquarters in St. Paul, Minnesota, beside the organization's headquarters in the several states in which it is operating. It has 200,000 members, with hundreds of organizers, working in 11 states, scattered from North Dakota to Texas and from Wisconsin to the Pacific Coast; it owns hundreds of automobiles; three publications, the *Nonpartisan Leader* at St. Paul, Minnesota, with a circulation of 200,000, which is increasing at the rate of 10,000 a month; another nonpartisan publication in Idaho, and the largest newspaper plant in North Dakota, at Fargo, from which it issues a morning paper. In the 1916 elections the league captured all the state offices but one, that of state treasurer; it elected 81 out of 113 members of the lower house of the legislature and 18 out of 25 senators. They failed to carry out the principal features of their program because there were 24 holdover senators, which gave the opposition a majority in that body.

Mr. Townley accomplished this modern miracle almost altogether by use of the following arguments, taken from their handbook, "Facts for the Farmer", published by the National Nonpartisan League, but which may be found in the various reports of special congressional and legislative committees and public documents issued by state and federal officials.

1. *Boards of trade.* Under this head, their chief point of attack was the Minneapolis Chamber of Commerce, which, it was alleged, was an absolute monopoly, controlled by a few powerful men, who also controlled the great milling and elevator companies. Its operations were secretive and exclusive; its membership beyond the average man, costing \$6,000. Of its membership of 318, 135 were held by line elevators, 50 by millers, 39 by terminal elevators, and 200 by grain commission houses. That, for instance, the two great companies of Van Dusen-Harrington and Washburn-Crosby owned, controlled, and voted 21 memberships each, or a total of 42.

That this close corporation of grain dealers played at ducks and drakes with the farmers' profits. That commission houses owning subsidiary companies sold grain to their own subsidiaries and bought it back from them, ad infinitum; that commissions were charged for buying as well as for selling and

for future transactions; that commissions were also charged for hedging; that when a bushel of wheat had been bought and sold eight times, an extra tax of one cent had been levied on the farmers' profit; that through the manipulation of this close corporation, into which it was all but impossible for the farmer to break, he was compelled to take an inadequate price at the season when he must sell, but that before the product reached the consumer, through control of the market and its surplus, the consumer was forced to pay an unreasonably higher price than the farmer received. Other boards of trade and chambers of commerce dealing in wheat were charged with the same crimes as the Minneapolis Chamber of Commerce. It was charged that these exchanges and their bucket shop appendages cost upwards of \$200,000,000 annually, most of which came out of the farmers' pockets; that on the Chicago market 300 bushels of wind were bought and sold for every bushel of real grain.

2. *Dockage.* That the great corporation-owned line elevators gouged the farmers out of millions of dollars annually through false dockage for foreign seed and dirt; that, as a result, the farmer lost from \$30 to \$35 on every 1,000 bushels of wheat sold; that he not only lost the dockage but was charged freight on it to the terminal. This so-called dirt, on which he paid freight to the terminal, was made up largely of wild oats and mustard seed. In May, 1917, wild oats were worth about 62 cents a bushel and mustard seed from \$30 to \$35 a ton. Doctor E. F. Ladd, president of the North Dakota State Agricultural College, estimates that dockage alone costs the farmers of the state \$2,394,000 on a 100,000,000 bushel crop.

3. *Mixing of grades.* That the high grade hard wheat raised in North Dakota was undergraded and mixed in the terminal elevators with soft wheat and the resulting mixture raised to the grade given the farmer for his hard wheat. In one period, 1910 to 1911, certain terminal elevators at Minneapolis received 15,571,575 bushels of No. 1 northern wheat and shipped out 19,978,777 bushels of the same grade. During the same period they received 20,413,584 bushels of No. 2 northern and shipped out 22,242,410 bushels of the same

grade. They began the period with no wheat of either grade on hand and closed it with 114,454 of No. 1 northern. Thus 6,500,000 bushels were "mixed" from lower to higher grades, despoiling the farmers of from two to 12 cents per bushel.

4. *By-products.* That the price paid the farmer for wheat was based solely upon the flour product and that the screenings, bran, and shorts were clear profit to the terminal elevator and the milling company. Doctor Ladd found the by-products of a 100,000,000 bushel crop to be worth \$20,019,000, for which the farmer did not receive a single penny.

5. *D feed wheat.* The 1916 crop in North Dakota was seriously damaged by hot winds and the terminal markets invented new grades, known as A, B, C, and D feed. The North Dakota Agricultural College has a model mill in which the flour and bread values of wheat are ascertained. Doctor Ladd ascertained the milling value of the different grades of "feed wheat". A carload of "D feed" will serve to illustrate Doctor Ladd's bulletin which has caused such a furor in the Northwest. For this carload of wheat the farmer received \$1,034.39 at his local elevator. It sold in Minneapolis on the terminal market for \$1,195.72. As mill products it was wholesaled at \$1,850.02 and retailed at \$2,330.73. The increase in cost of the mill products over the original price paid the farmer was \$1,295.34, or more than 125 per cent.

6. *Farmers' total loss.* Ex-President John H. Worst, of the North Dakota Agricultural College, in a speech before the Tri-State Grain Growers' Convention held at Fargo in January, 1916, declared that the marketing conditions cost the farmers of North Dakota \$55,000,000 annually. This statement was based upon an investigation conducted by the agricultural college and was widely used by the farmers in their campaign for control of the state.

7. *The big millers' profits.* That on May 23, 1917, the profit on a barrel of flour milled by the big milling concerns of Minneapolis was \$4.89 and that the middleman's and distributor's profits were \$5.00 per barrel, making a total profit on the 4.3 bushels of wheat used in milling a barrel of flour of \$9.89, while the flour itself retailed for \$19 a barrel.

8. *Conscription of wealth.* In addition to purely agrarian

arguments, of which the foregoing is illustrative, the league has added a new argument, the conscription of war profits for the conduct of the great war. It is usually referred to as the conscription of wealth.

The so-called league program embraces the following objects:

1. state-owned terminal elevators;
2. state-owned packing plants;
3. state-owned flour mills;
4. state-owned warehouses;
5. exemption of farm improvements from taxation.

The ultimate object of the movement is the elimination of the profits of middlemen through co-operation and public ownership of the means of production.

As a corollary to this program, rather than a fixed policy of the league, is a spontaneous movement throughout the state to reduce the cost of distribution. Co-operative retail stores of all descriptions are being organized, the stock being freely subscribed by farmers. A number of such stores are already in operation, retailing everything from toothpicks to steam threshing outfits. Many such corporations are being organized which will either establish new stores or purchase those already in existence. At Valley City, one of the principal towns of the state, the farmers recently purchased the largest mercantile establishment in the city and will do a general retail business, including hardware and farm machinery.

The Farmers Trust Company, with a capital stock of \$500,000, has been organized and the stock subscribed by farmers for the purpose of establishing farmers' banks throughout the state. One bank has already been established at Minot, the third city in the state, which bids fair to become one of the largest banks in the state. This holding company is increasing its capital stock to \$1,000,000 and is planning the establishment of farmers' banks throughout the state to provide cheap capital for the farmer.

Only one of the five planks of the league platform was enacted into law by the 1917 legislative assembly — the plank providing for the exemption of farm improvements from taxa-

tion. This measure provides that acre property, town and city lots, bank stock, railroad, express, and telegraph property shall be assessed at 30 per cent of actual value; that household goods, house equipment, and wearing apparel, structures and improvements on farm lands, shall be assessed at five per cent of actual value; while all other property shall be assessed at 20 per cent of actual value. The law further provides that any city commission or council or board of trustees, by resolution at a regular or stated meeting, may fix a different percentage than 20 per cent of actual value upon structures and improvements on town and city lots, provided that the rate shall not be less than five per cent of its full and true value. The city of Bismarck, the capital of the state, has already passed the required resolution to assess improvements on city realty at five per cent of actual value. It is probable that other cities will follow, if the law proves to be constitutional.

While the league has no authorized tax program, it is generally believed that its aim will be to establish a land tax, supplemented by an income tax, with a gross earnings and privilege or franchise tax on public utilities. The league championed a number of tax measures in the last legislative assembly which became laws, one of which is known as "the situs law", fixing the situs of intangible property arising out of business transacted in North Dakota within the state, for purposes of taxation, regardless of the domicile of the owner. A standard inheritance tax measure; a measure enlarging and defining the powers of the tax commission; a three mill tax on the full value of money and credits; and a number of other meritorious minor measures were passed.

The so-called farmers' movement in North Dakota should challenge the serious attention of thinking men. Its marvelous growth over such an extended territory is an evidence of economic unrest, which may not be confined to the Middle West or the Far West—it may be an outcropping of a general feeling among the mass of the people that the present economic organization of society is unscientific and inequitable. It reveals a serious condition and cannot be sneered off the stage or destroyed by abuse of its leaders or the charge that its membership is unpatriotic. To charge that Townley and his

associates are socialistic, anarchists, free lovers, crooks, adventurers, and demagogues does not answer the complaint of a considerable body of people scattered over a wide area. Neither does the assertion that Hiram Rube has been stung again, and that after he has been relieved of his money the leaders will decamp and that the organization will be at an end, explain anything. Like all radical or unusual movements, it has attracted to it many cranks, faddists, and the one-idea men who have a cure-all for all human ills, but the great body of its membership are honest, straight-forward, intelligent American citizens who believe that they are suffering economic wrongs and that they have hit upon a plan to right them. They bitterly resent the charge that the movement is socialistic, unpatriotic, or un-American. They contend that it is what it appears to be, a nonpartisan movement to secure economic advantage for the farming class.

I am now, and have been since its inception, a close observer of the development of this movement and am convinced that it will not fall to pieces of its own weight, and that it is a power which must be reckoned with by publicists and statesmen in the immediate future. There is no doubt in my mind but that it will be represented in the next Congress by a fairly large group of congressmen and may possibly hold the balance of power—it may even be an important factor in naming the next President of the United States. It is the most perfect political organization of which I have any knowledge and is directed by a genius for organization of a high order. The Farmers' National Nonpartisan League, with its pretentious program of public ownership, should be an object of study on the part of every taxing official and expert in this country.

I hope I may be pardoned if in conclusion I digress for a moment and defend the state of my adoption from the charge of disloyalty which has been bruited about in the newspapers of the country. North Dakota is a state of 636,994 inhabitants, devoted almost altogether to agriculture. Crops have been well nigh a failure for two years. In spite of this the state over-subscribed the liberty bonds 74 per cent, the apportionment being \$6,000,000 and the subscriptions aggregating \$10,450,000; it also over-subscribed the Red Cross funds. Bur-

leigh County, in which the capital of the state is located, with 14,157 inhabitants subscribed \$32,625.52 to the Red Cross. Bismarek with 6,344 inhabitants subscribed \$22,054 to that fund.

One-third of the population is made up of Germanic speaking peoples, a large percentage of whom are foreign born. In spite of this fact the state sent 1,000 volunteers to the United States navy, 3,600 volunteer militiamen into the army, and enough volunteers into the several other branches of the service to bring the total number of volunteers almost up to the total number of drafted men, making a total of approximately 12,000 men in all branches of the service, or about two per cent of the total population. When it is considered that more than 80 per cent of all the people reside on farms and more than 80 per cent of the wealth is owned by farmers, it cannot be said that the farmers of North Dakota have not done their full duty, both in men and money, for the prosecution of the war.

The charge that Governor Lynn J. Frazier has been disloyal or recreant to his trust as chief executive of the state is absolutely without foundation. I have spoken many times from the same platform with Governor Frazier at patriotic meetings and have heard him make a great many speeches, patriotic and otherwise, since the declaration of war, and I have never heard him make a speech in all that time in which he did not advocate liberal subscriptions to the Red Cross, the liberal buying of liberty bonds, and liberal support in every way by the people of the state of the federal government in the present war. He is of American stock, intensely patriotic, and was pro-ally before the declaration of war. It is my earnest belief that no governor in the Union has more faithfully discharged the trust imposed upon him as executive of a state or more loyally upheld the hands of the President in the present crisis.

RECENT EVENTS IN TAXATION IN KENTUCKY

HITE H. HUFFAKER

Chairman Kentucky Special Tax Commission, Louisville, Kentucky

Ever since the adoption something over a quarter of a century ago of the present constitution, Kentucky has been struggling to distribute equitably the burden of taxation under sections providing that "all property not specifically exempted" by the constitution "shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale", and that taxes "shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax". However advisable such provisions might have appeared at the time of their adoption, it soon became evident that in practice they were unworkable. The rate of taxation was found to be so high as substantially to prohibit the holding, or at least the listing for taxation, of money, stocks, bonds, notes, mortgages, accounts receivable, and all such classes of intangible property, because the sum total of the rates of taxation in all the larger centers where such property was principally held amounted to between \$2.50 and \$3.00 on each \$100 valuation of such property.

Led by the esteemed and highly respected late William A. Robinson, whose loss we now all mourn, the handful of citizens interested in the economic welfare of Kentucky set about to secure tax reform. Several special tax commissions studied the problems and reported thereon, but it soon became evident that nothing could be accomplished without a change in the constitutional provisions. After years of untiring work on the part of Mr. Robinson and his associates, the legislature was finally prevailed upon to submit to the vote of the people the question of whether or not the constitution should be amended so as to permit property to be classified for taxation. When submitted to a vote of the people at the November election of 1913 the amendment was adopted, but owing to the failure of the secretary of state properly to advertise the same

the court of appeals held the adoption illegal. The following legislature again submitted the question, and at the November election in 1915 the amendment was again duly adopted.

This left the general assembly of 1916 free to enact laws to relieve conditions, but no one seemed to feel sufficiently advised, even after the years of study, to be able to make any substantial, practical, and clear-cut recommendations; so the best the legislature could do was to authorize the appointment by the governor of a special tax commission consisting of three members from the senate and four from the house to study the questions involved, make a report of its recommendations, and to submit with the same such bills as it might recommend, with the further admonition that its report should be made to the governor not later than October 15, 1916. The state at that time had a floating debt of approximately \$3,500,000 and was facing an annual deficit of approximately \$75,000. It was hoped that the special tax commission would be able to recommend, even in so short a time, a solution that would justify the governor in calling an extraordinary session of the general assembly to enact such recommendations into laws.

The special tax commission was appointed the latter part of April, 1916, and immediately took up its work. It conducted hearings in eight of the principal centers of the state, to which the public were invited with a view to securing their ideas and suggestions. Many of you will remember that the members of the special commission attended the conference of the National Tax Association at Indianapolis last year and were most willing to receive suggestions from the many expert advisers with whom they came in contact; and I wish to express to the association, on behalf of this special commission, their gratitude for the interest and help they received from members of the association at the Indianapolis conference. They all feel that the information acquired from their attendance at this conference and their association with the various individual members materially assisted them and inspired their ultimate conclusions.

The special tax commission after its six months' work made a report as provided, which met with the approval of the governor and such a number of interested citizens that an extra-

ordinary session of the general assembly was convened at Frankfort on February 14, 1917, for the express purpose of considering the aforesaid report and enacting a new tax law.

Prior to the enactment of the new laws by the recent extraordinary session of the general assembly, the assessing machinery of the state consisted of 120 county assessors, elected by the people; a state board of assessment and valuation, consisting of the heads of three state departments, whose duty it was to value franchises; the railroad commission, in whose hands was lodged the taxation of tangible personal property of the railroads; and a board of equalization consisting of seven members appointed by the governor from the seven appellate court districts of the state, whose duty it was to equalize values between counties by raising all the property a given percentage, but with no jurisdiction to equalize property of different classes wrongfully valued in any one county.

Such taxing machinery proved absolutely inadequate and ineffectual. Property was listed by the owner thereof at almost any value he chose to place upon the same. Each county assessor seemed to be more or less proud of the fact that he was enabling his taxpayers to escape with as little taxation as possible. The state board of equalization was without means to equalize valuations, and in their efforts to secure sufficient revenue for the state by placing raises of a given percentage on property in a county placed upon honestly listed property and grossly undervalued property the same increase, making one class pay more than its just share and the other class much less than its just share. The state board of assessment and valuation was so constituted that its members, consisting of the heads of three state departments, were so engaged in other duties that it was with difficulty that they were able to spare a portion of their time in assessing for taxation the franchises within the state, the result invariably being that an annual dispute would arise between the board and the utilities assessed, which resulted in litigation to determine the rights of the parties. The railroad commission, as anyone might readily suspect, was confronted with so many problems in the supervision of rates, service, etc., of the railroads that it was able to give no considerable portion

of its time to a study of the value of the tangible personal property of the railroads, with the result that this class of property was also inadequately and inequitably assessed.

The first step of the extraordinary session of the general assembly was to establish a central taxing board, with the functions of the old board of equalization, board of valuation and assessment, and the valuing and assessing powers of the railroad commission, to be known as the state tax commission. This commission was given supervisory power over the work of the 120 county assessors, was given sweeping inquisitorial powers to examine into the records of persons, firms, and corporations having property within the state, and the power to reassess any county whose local officials failed to perform their duties properly.

This commission was made up of three members, two of whom were appointed by the governor for a term of four years, selected from the two dominant political parties within the state; the third member is the auditor, who was made ex-officio a member of the commission. The two commissioners appointed by the governor are given salaries of \$3,600 per year and the auditor is allowed \$50 a month additional for his work as a member of the commission. The two appointive members are not permitted to engage in pernicious political activities and are disqualified for holding any political office for a period of four years after having served as a member of the commission, in order that the work of the commission may be removed as far as possible from any and all political influences. The commission was authorized to employ a secretary at a salary of not exceeding \$2,000 per year and was allowed \$15,000 annually for other clerical help and traveling and other expenses. The two appointive commissioners may be removed by the governor for inefficiency and neglect of duty, malfeasance in office, pernicious political activity, or continued ill health, not, however, until after having been given a hearing.

The appointive commissioners are required to devote their entire time to the duties of the office and are not permitted to hold any other position of trust or profit or engage in any other occupation to which they are required to devote their

personal attention. The commission is given specific power and authority to prescribe forms for listing property for assessment, forms of tax books or assessment rolls, forms of recapitulation sheets, and forms of all other reports required to be made or certified to the commission or to any other taxing authority. A special form or schedule for listing all intangible personal property is provided for, which form or schedule is treated as a confidential communication by the assessing authorities.

The tax commission is required to have annual conferences with the county assessors, which conferences are held in the various congressional districts of the state for those assessors residing in the district, with a view to discussing the problems confronting the authorities and for the purpose of education.

Instead of the old form of equalization, the new law provides that after completing his work the county assessor of the various counties shall transmit his recapitulation sheet to the tax commission. The tax commission must examine the recapitulation of the assessors' books from each county and compare it with such data as they may obtain from any source, in order to determine whether the assessments conform to the law. It has power to raise or lower the assessed value of any county or of any class of property, and equalization is accomplished by directing that the county board of supervisors in revising the assessed value of all the property or of any class of property in the county shall make the total assessed value of all the property or of any class of property amount to a given sum, leaving to the local boards of supervisors the right to place the additional burdens upon such property as they may find to be undervalued, or upon property which they may discover has been omitted by the assessor. The county boards of supervisors consist of three members appointed by the county judges of the various counties.

After having provided a central taxing body with full authority to force all property upon the assessment list and to see that the same was properly valued, the next problem was to devise a classification by means of which sufficient revenue could be raised to meet the demands of the state and at the same time to distribute the burden of taxation so equi-

tably as not to work an unreasonable hardship upon any class of property. Political as well as economic questions were involved in a solution of this problem, but finally the state rate was reduced from 55 to 40 cents on \$100 and all property within the state was made taxable for state purposes at this rate except three particularly favored classes, money in bank, stock in building and loan associations, and live-stock; these classes are taxable at the rate of 10 cents on \$100 instead of 40 cents.

Because of the heavy burden of local taxes it was evident that certain classes of property could not be expected to pay in addition to the state rate the local rate without substantially submitting to confiscation. Farm implements and farm machinery owned by persons actually engaged in farming and used in their farm operations, machinery and products in course of manufacture of persons, firms, or corporations, actually engaged in manufacturing, and their raw material actually on hand at their plants for the purpose of manufacture, and money in hand, notes, bonds, accounts, and other credits, whether secured or unsecured, shares of stock in corporations which do not have at least one-fourth of their property in Kentucky and pay taxes on the same, and money in bank, and stock in building and loan associations are taxable for state purposes only, at the aforesaid rates in lieu of all other claims for taxes.

A recording tax of 20 cents is now imposed upon each \$100 or fraction thereof of indebtedness which is secured by any mortgage on property in Kentucky which does not mature within five years.

A license tax ranging from \$200 to \$500 per day is imposed upon race tracks operating within the state. A license tax of two cents on each proof gallon of distilled spirits which is liable for tax to the federal government is now imposed, and an excise tax of 10 cents for every barrel containing not more than 31 gallons of beer, ale, porter, or other similar fermented liquors sold within the state. The annual license tax on corporations doing business in the state was increased from 30 to 50 cents on each \$1,000 of that part of their authorized capital stock represented by property owned and business trans-

acted in the state. A tax of one per cent of the market value was placed upon all oil products in the state and each county was authorized to impose a tax for local purposes not to exceed one-half of one per cent.

A penalty of 100 per cent of the amount of taxes and interest at the rate of six per cent per annum from the time the taxes should have been paid is imposed as a penalty for failure to list any money in hand, notes, bonds, accounts, or other credits, secured or unsecured, or shares of stock liable to assessment, and actions to recover the same may be brought at any time within ten years after the tax shall have become due; and in addition to the aforesaid penalties failure to list any note or bond shall be a bar to any action upon the same until the holder thereof has paid all taxes, penalties, and accrued interest. As an additional inducement to holders to list for taxation the intangible personal property just mentioned, they were given immunity from any and all claims for back taxes on all such property that they might list as of September 1, 1917.

Soon after appointment and organization the tax commission held conferences in the 11 congressional districts of the state for the purpose of instructing the local assessors as to the provisions of the new law and as to what was expected of them in the performance of their duties. It is already evident that the work of the tax commission and its instruction of the local taxing authorities will be productive of most gratifying results. From information already at hand it is safe to predict that the taxable values in Kentucky will be substantially doubled the first year. In the county of Jefferson, in which is located the city of Louisville, the amount of intangible personal property, consisting of stocks, bonds, notes, and accounts, has increased from \$12,500,000 to approximately \$125,000,000, and the returns are not yet complete. The tax of 10 cents per \$100 on money in bank is remitted by the bank and has produced approximately \$125,000 more than it formerly produced to the state with the 55 cent rate. The results so far under the new law are most encouraging and it is believed that under the guidance of the present most capable tax commission Kentucky will soon have at least a reasonably satisfactory system of taxation.

It was at first feared by some that the local subdivisions would not be able to raise sufficient money on account of the loss of the property exempted from local taxation, but the values of other personal property, and in some instances real estate, have been raised sufficiently to make up the loss and in many cases will probably even justify a reduction in the local rates. The schedules prescribed by the tax commission were much more sweeping in their interrogatories and this, together with the untiring efforts and intelligent work on the part of the tax commission, the support of the people and their desire to be honest, is believed to be responsible for the result.

There are problems, however, which still are giving considerable concern to the tax commission; the valuation of mineral rights, for instance, in which Kentucky is extremely rich. Much has been said both for and against a tonnage tax on the output of coal, and various other schemes for enabling the state to collect its just proportion of taxes from minerals, but no definite conclusion has yet been reached. So far it has been thought best to endeavor to secure the listing of mineral lands at a fair valuation instead of imposing a tonnage tax, but in all probability if the values are not raised considerably above their present amount an output tax will be imposed in addition to the general property tax. Merchandise has probably been as grossly undervalued as minerals and intangibles and, while its value has so far under the new law been greatly increased, it is quite a problem to know upon just what basis and by what means it could be equitably valued and taxed. Merchants have urged that merchandise should be relieved of some of the local burden, but neither the special tax commission nor the general assembly has thus far been convinced of the justice of their arguments.

The problems confronting Kentucky most likely confront many other states at the present time, and I hope that we may all work together under the guidance of the National Tax Association to devise a solution both satisfactory to the states and just to the taxpayers.

REPORT OF THE COMMITTEE UPON A MODEL TAX SYSTEM

Soon after the appointment of the committee in November, 1916, the members began an interchange of views, and it early became evident that there was a tolerably complete agreement concerning most of the fundamental questions involved in the problems referred to its consideration. Under date of December 14, January 11, and June 20, the chairman transmitted to all the members the results of the interchange of opinions; and, if it had not been for the outbreak of the war, it is probable that the committee might have been able to present to this meeting a final report concerning its conclusions. But the outbreak of the war seriously interfered with the work of the committee. One of the members, Mr. Mills, is now on his way to France; another, Professor Adams, has entered the employ of the Treasury Department as a revenue expert; and most of the others have been unable to give much attention to the reform of state and local taxation. A majority of the committee has held one meeting at this conference, and is able to submit at this time a brief statement of the conclusions tentatively reached.

That the inheritance tax should be a part of any model system of taxation goes without question. But the National Tax Association has a special committee upon the subject of the inheritance tax; and the committee upon a model tax system naturally has inferred that it was not expected to consider the subject of inheritance taxation. It, therefore, has confined its attention to property, income, and business taxation, as the proper field for its study.

The first interchange of opinion among the members of the committee showed that all the members believed that the solution of the most difficult problems of state and local taxation could best be found in some combination of income and property taxes. Further than that no consensus of opinion has been reached. The chairman of the committee undertook last spring to prepare and to submit to the committee a memorandum concerning possible combinations of income and property taxes, but he was unable to send this memorandum to the members until October 5, 1917, so that upon this fundamental question the committee has not progressed beyond the point reached by correspondence last spring. The chairman had

hoped at least to develop this memorandum into a paper which could be presented at this meeting of the National Tax Association, but pressure of other work has made it impossible for him to do so.

While it is obviously undesirable to multiply taxes any more than is absolutely necessary, some members of the committee are of the opinion that business taxes must have a place in any model system of state and local taxation. Upon this subject no effort has been made to reach an agreement, but it was agreed that it would be desirable to have Professor Adams, who has long been interested in business taxation, prepare a paper for the present conference, and he has very kindly consented to do so. It is to be hoped that this paper will help to clarify the views of all students of taxation upon a subject that has probably received less attention than its importance demands.

In conclusion we are able to report that the experience of this committee has convinced us that a representative committee of the National Tax Association can, under circumstances less unfavorable than those which have existed since last spring, and with an opportunity for personal conferences extending over several days, reach a substantially unanimous agreement concerning the more important features of a model system of state and local taxation. They will not, indeed, be able to provide a single solution for all the problems that must be faced in every state, but they can outline the fundamentals of a plan which, with necessary modifications to meet local conditions, can be readily adapted to the needs of any state. Whenever conditions seem favorable for such an undertaking, the National Tax Association should renew the effort which unfortunately has yielded such slight results the past year.

CHARLES J. BULLOCK, *Chairman*

CHARLES V. GALLOWAY

C. P. LINK

SAMUEL LORD

THOMAS W. PAGE

The correspondence had last spring leaves no doubt in the chairman's mind that this report, signed by five members of the committee, would have received, if the other members had been here, the signature of each of those members.

THE TAXATION OF BUSINESS

THOMAS S. ADAMS

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In recent years there has been an increasing disposition to question the wisdom of taxing business or of laying taxes upon the business unit. This questioning is not a mere product of the irritation that accompanies tax paying. Reasons, or at least arguments, are given which command attention. If property is taxed and income is taxed, we are asked, why mess up the simplicity of the system by a further tax on enterprise, a penalty on initiative and thrift, a damper on industry? The attempt to tax business, the critics proceed to say, has complicated the property tax and marred the income tax; it has inspired attempts to measure the halo with which live business invests dead assets and to assess property more when it is owned by a successful business concern than when it is owned by an unsuccessful concern; it sets the tax-gatherer on a hunt for good will and intangibles; it has generated a brood of "franchise taxes" which are inconsistent, illogical, and selfish; it corrupts the income tax, giving rise to indefensible exhibitions of double taxation in which the state or the nation taxes income both where it originates and where it is received; and, finally, it is shifted when it was not expected to move, or perversely remains "put" on other occasions when it was confidently expected to move along to the ultimate burden-bearer.

Worst of all, the criticism continues, taxation on the business unit violates the principle of ability to pay. Take two corporations with precisely the same capital, business, and net income. One is owned by a large number of small shareholders, mechanics and workingmen perhaps. The other is owned by a few rich men. A given tax upon the first corporation will not have the same effect upon its shareholders as an equal tax would have upon the shareholders of the second corporation. Large corporations are frequently owned by

small shareholders, and small corporations are frequently owned by wealthy shareholders. It follows, therefore, according to the critics, that in imposing taxes, particularly income taxes, we should avoid the intermediary, the go-between, the business agent, and lay the taxes directly upon the individual shareholders. Only thus, it is asserted, shall we avoid conflict with the great principle of ability to pay.

This, in crude form, is the case against the business tax. In attempting to consider it, limitations of space and other obvious reasons make it necessary to confine the discussion practically to taxes on mercantile, manufacturing, and miscellaneous competitive business concerns. We must put to one side and ignore punitive taxes, sumptuary taxes consciously designed to repress certain industries, taxes on monopolies and trusts imposed in the hope of recovering for the public some of the gains wrongfully wrung from the public, and quasi-rental charges employed to measure the privileges conferred by the state upon some corporations. These are special business taxes for which there is, or is supposed to be, special justification. For somewhat different reasons, the conclusions reached in this paper are also inapplicable to railroads and many other public service corporations, with respect to which the land tax and the business tax are inextricably interwoven. It seems desirable to add, also, that I express merely personal opinions which, for the most part, I have held for a number of years.

I

The strongest reason for the retention and perfection of business taxation is found in experience and fiscal history. Business taxes are as old as organized business. They are all but universal throughout the world and show no tendency to disappear with the passage of time. We have hundreds of them in the United States. Frequently with us the necessity of taxing business is not frankly acknowledged, and all sorts of indirect efforts are made to accomplish the same end under the guise of so-called franchise taxes, incorporation fees, corporate excess taxes, and the like. These are in reality forms of business taxation and, in my opinion, we shall never have

even an approximately consistent scheme of taxation until the necessity for separate business taxation is recognized and imposts laid which are consciously designed to express the fiscal obligations of business as such.

From political and moral standpoints, the justification for this great class of taxes is plain. A large part of the cost of government is traceable to the necessity of maintaining a suitable business environment. Historically, some writers maintain, the city has been evolved for the very purpose of fulfilling this function. Business is responsible for much of the work which occupies the courts, the police, the fire department, the army, and the navy. New business creates new tasks, entails further public expense. A small amount of new business may not show its influence at once upon public expenditures. The relationship between private business and the cost of the government is a loose one, much like the relationship between the expenses of a railroad and the amount of traffic which it carries. The connection, however, is real and, in the long run, the more business the greater will be certain fundamental costs of government. The industry which does not pay its due share of public expense is generally a source of weakness and not a source of strength. Surveyed from one point of view, business ought to be taxed because it costs money to maintain a market and those costs should in some way be distributed over all the beneficiaries of that market. Looking at the same question from another viewpoint, a market is a valuable asset to the social group which maintains it and communities ought to charge for the use of community assets.

Finally, taxes upon business have great fiscal virtue as such. They are relatively inexpensive to collect and comparatively productive in yield. A given rate of taxation laid upon the business unit will usually yield a very much larger revenue than the same rate of taxation laid upon the individual owners of the business.

II

Is not this fiscal obligation of business adequately met by the property tax and the personal income tax?

I think not. So far as the property tax rests on land it has a peculiar justification, dependent principally upon the important phenomenon usually described as the capitalization or amortization of taxes. In the case of mercantile business, to be sure, the rental value of the real estate which it uses is closely connected with the fiscal obligation under discussion. But most of this rental value is paid to private owners and, as has just been suggested, the whole situation is complicated by the amortization of land taxes. Moreover, in the case of factories and other miscellaneous business concerns there is no helpful relationship between the rental value of the real estate occupied and the duty which the business in question bears to the state. And so far as personal property is concerned it is obvious that the amount of property which a man owns or uses at a given place has no helpful or necessary relationship either to the expense which his business causes to the government or to the success with which he is able to exploit the commercial possibilities of that place.

In the taxation of a process so elastic and mobile as business, there is necessarily present an element of the *quid pro quo*. You cannot charge for access to the market in the long run more than such access is worth. It is for this reason you cannot successfully or logically measure the business tax by property. There may be much property with little business or much business with little property. You can make shift, poor shift, with a property tax for this purpose, if you will abandon the uniform rate, make all sorts of dickers with different classes of business, create franchises where there are no franchises, and manufacture with your fiscal imagination all sorts of intangible property based upon business, giving this intangible property a flickering, uncertain situs where the business is transacted. This is business taxation, but poor business taxation. Fortunately, however, we have already come to recognize this truth. Whether there should be any tax on business at all is a fair question for debate; but, granting the necessity for such taxation, few people will now seriously defend a tax on property as a fair measure of the duty devolving upon business as such to support the state.

For similar reasons the personal income tax is plainly un-

fitted to express the fiscal obligation in question. That tax is supposed to be paid where a man resides, not where he transacts business. Here is a corporation whose owners live in jurisdiction A, whose factory is in jurisdiction B, whose main offices are in jurisdiction C, and whose principal sales department is in jurisdiction D. It needs no discussion to prove that each of these jurisdictions will demand and in the long run will succeed in collecting some tax, although the personal income tax would ordinarily be collected in only two of these jurisdictions, and many advocates of the income tax would confine the collection to jurisdiction A, in which the individual owners reside.

III

So much for the general philosophy of business taxation. In what form would it adapt itself most successfully to the general structure of the American system of taxation?

Much in this connection can be said for a tax upon gross business. The supporting arguments in this connection are familiar: such a tax is not inquisitorial; it does not raise difficult questions about losses, depreciation and the like; it is more easily allocated among competing jurisdictions than a tax upon net income. Perhaps the most severely logical form of business taxation would be one upon gross business at different rates for the various classes of trade and industry, which rates were themselves determined by the normal or average relationship between net income and gross business in each class of trade or industry. I speak of this as "perhaps the most severely logical form of business taxation" because there is in business taxation a harsh element of *quid pro quo* which tempers the milder element of ability to pay. In imposing such a tax the government would say in effect to the business man: "You have come amongst us and have exploited our market; you have trafficked as much as your competitor; whether you have used your opportunity as well as he is not our concern. It is the gross volume of your trade which both represents your opportunity and causes our expense. Upon that you must pay."

I have no particular quarrel with that philosophy, but an-

other philosophy impresses me as being grounded upon a deeper truth and likely to prove in practice more successful. I like better the deeper insight of shrewd old Adam Smith, who in the first of his famous canons harmonized the benefit and ability principles in words which have been often quoted :

“ The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.”

There is no perfect measure of any tax. Net income is not a perfect measure. But it is a better measure than gross income. It encourages the infant industry. It spares every industry in the lean years. It fosters industrial experimentation. In practice it saves the legislature the invidious task of classifying the various rates that must be adopted if the tax is laid upon gross income or gross business. I have had some experience with a highly classified business tax. I have no hesitation in stating that the legislative task of differentiating the rates, together with the subsequent administrative task of locating each industry in its proper place, raises more and more difficult problems than are raised by the net income tax. In the long run the net income tax is the simpler; it wears better. Moreover, classified business taxes almost always look up to the net income tax as their final goal and approach it more closely year by year.

The tax should not only be upon net income, but the rates should be graduated. It is difficult to obtain a sound basis for the graduation of income taxes imposed upon business units. This is a problem which has long worried thoughtful students of taxation. The solution, there is some reason to believe, has now been found—not the exact solution but an approximate one. I refer to the excess profits tax which, first adopted a year or two ago, has now spread to 14 or 15 countries and is yielding handsome revenues in most of them. A light tax

should perhaps be imposed upon the net income of all concerns. But the heavier rates and the heavier taxes should be imposed upon those concerns which are abnormally prosperous. The American excess profits tax is essentially a graduated supertax upon the net income of business concerns, and it has been so described by Senator Simmons, Representative Cordell Hull, and other members of Congress.

It is no accident, I believe, that after months of the most earnest investigation Congress determined by a large majority to adopt an *excess profits* tax rather than a war profits tax. This decision registered a deliberate judgment of Congress. It means, in all probability, that the excess profits tax has come to stay. For observe this difference: If we measure the excess to be taxed as the difference between income during the war and income just before the war, the tax is essentially temporary. The basis would become more illogical with each passing year, and the tax would be likely to disappear with the war which created it. But if we succeed, approximately, in determining what is the normal income and lay the tax upon the net income in excess of that normal return, we have a tax that may permanently endure. It represents, as it were, the share of the state in the "supernormal" success of every business enterprise. It measures roughly the value of the facilities, opportunities, and environment offered by the community. While I express no settled conclusion on this point, it seems to me exceedingly probable at the present time that the excess profits tax will continue as a permanent part of the American tax system. It will be, so far as the federal government is concerned, its expression of a graduated net income tax upon business.

At this point it is convenient to notice the fundamental criticism that taxes imposed upon the business unit do not conform to the principle of ability to pay.

As I have stated in another place, it is a shallow and narrow interpretation of the ability principle that tests its every application by the effect of the tax upon the consumer; which surveys man, the taxpayer, only as one who clothes his back and feeds his body. There are many valid varieties of the ability principle and among them are those which survey the

taxpayer in his capacity as producer, which take the business man in his economic and political environment, which recognize the truth that the state and community stand as silent partners in every business enterprise, which make a permanent place in our revenue system for a tax designed to take for the community a fair portion of all profits in excess of the amount required to elicit the requisite investment of capital.

Most good business taxes combine or represent at once both the ability and the benefit principles. The English income and excess profits taxes represent, according to the English courts, shares of the state in the profits of private business; and the similar American taxes so far as they apply to business concerns apparently partake of the same character. These are not taxes upon the individual, to be judged by the sacrifices which they impose upon him, but the prior claim of the state upon the private profits which public expenditures or the business environment maintained by the state have in part produced. The government's claim to part of the profits, particularly in time of war, is so strong as almost to justify the statement that the stockholders have no claim on the profits until the government has released them. When a special assessment or betterment tax is imposed, no cognizance is taken of the individual's ability to pay. For much the same reason, when an excess profits tax is levied upon a corporation or partnership no cognizance need be taken of the taxpaying ability of the shareholders. And yet business taxes are not antagonistic to the ability principle; they recognize, like the betterment tax and the inheritance tax, a species of ability to pay created by the activities of the state or by a "conjuncture" afforded by the community. The state or the community creates, as it were, the fund from which the tax is taken. Moreover, business concerns do possess an organic unity; they are, when compared with one another, less able or more able to pay; the ability standard does apply to them as corporate or business entities.

IV

The tax upon the net income of business here proposed must be clearly distinguished from the personal income tax.

It is most distinctly not a mere method of collecting the personal income tax at source. The personal income tax is laid upon the individual in his capacity of consumer, and is paid where he resides; whereas the business income tax is paid by men in their productive or commercial capacity at the place where the income is earned. While it could and should exist side by side with the personal income tax, it would reveal many sharp differences. It would insist strictly upon the taxation of salaries, rentals, and interest at source. It would employ, as has been pointed out, an entirely different principle of graduation. It is allied in nature to the group of taxes *in rem* rather than to those *in personam*.

We should not, of course, push the idea to extremes. It would be undesirable, and in this country unconstitutional, to attempt to tax the profit on each casual sale at the place where it is made. But we may legitimately levy some tax upon each unit of organization, upon each established department of a business. This raises the difficult problem of allocation, but that is a problem which arises in the application of every tax imposed upon the income or capital of concerns doing business in more than one jurisdiction. As a practical method of allocation the best rule yet suggested, in my opinion, is to compute the net income of a business establishment as a unit and then distribute the net income in accordance with the property and "pay roll" of the business. A part of the net income, equal, say, to six per cent upon the net assets, may be distributed in accordance with the location of the physical properties. This is, as it were, a fair return upon the investment, which must be recognized before the more elusive elements of business are taken into consideration. Thereafter the business factors proper—the business of production, of marketing, of sale, and even of buying—may be roughly but fairly recognized by an apportionment in accordance with the expenditures for salaries and wages. These expenditures allocate themselves naturally and they measure perhaps better than any other simple standard the importance of the pure business factors.

This method of apportionment is merely a rule of thumb. Eventually the difficult problem of allocation will have to be

solved more scientifically. What is most needed is a uniform rule. Just what rule shall be selected is less important than the general adoption of the same rule by competing jurisdictions. Eventually the federal government (through the Interstate Commerce Commission or the Federal Trade Commission or both) should lay down general rules for this important department of American business. An equally efficacious remedy would be found in the adoption of some common rule by the Congress of States whose organization has just been effected; or by the passage, voluntarily, of uniform legislation upon this subject by the several state legislatures.

V

What should be the relation between the business tax and the general property tax? This is a far more difficult question and depends upon our interpretation of the meaning and future of the personal property tax. In my own opinion, the business tax should take the place of the tax upon the personal property of business concerns. But I arrive at this conclusion merely because, so far as I can see, the personal property tax has no rationale and no future. It has no pride of ancestry and no hope of posterity. It is at present merely a haphazard, unscientific, inequitable method of raising revenue. It is at once without scientific foundation and without large administrative virtues. I look forward to a system composed of a tax upon real estate, a personal income tax, and a tax upon the net income of business; augmented, of course, by inheritance taxes, sumptuary taxes, and other collateral revenues based upon miscellaneous but tenable grounds.

It is possible that the tax upon personal property might be perfected and placed upon a logical basis. In this event it would come to serve the general purpose for which the "supplementary tax" was introduced in Germany. A tax of this character upon capital or net assets might fill a useful and legitimate place. But for practical reasons it seems impossible to place the American property tax on this basis; and even if so sweeping a reform were effected, it would still leave place for the business tax of which we have been speaking.

THE JAPANESE TAX SYSTEM

SHIGO IDZUMI

Secretary to the Department of Finance, Tokyo, Japan

Let me express my great thanks for your permission to attend such an important and helpful convention. I am very much interested in your valuable reports and have been greatly instructed by your wisdom and experience concerning taxation, so that I feel bound to give some expression of my gratitude, although I do not know how to do so adequately. There is a Japanese proverb which says "A blind snake does not fear anything, even God". I am like the blind snake in venturing to speak boldly and, perhaps, imprudently to you, without hesitating in the presence of such respected gentlemen — professors, governor, mayor, and others of high rank, experts and officials. But I wish to give you an outline of our Japanese tax system, together with some of my own opinions concerning it.

I. BRIEF HISTORY

1st period: A tax system is, of course, a phenomenon of social and national life—a series of modifications of the primitive conditions. In ancient times in my country there were only three kinds of tax: "so", "yo", and "cho". The *so* is a kind of land tax, the *yo* a tax upon labor, and the *cho* a partial contribution of goods produced by the people. These taxes were simple, because the age was simple in its economic organization, and there was no money or other form of exchange currency. The *so*, *yo*, and *cho* were not properly taxes as we understand that word, nor did they include revenue received from the emperor's private domains (in this point differing from the early tax development of other countries), but are exactly analogous to the so-called "royal tenth" of England and France.

2d period: In this age the governing power formerly vested in the emperor was transferred to the "*shogun*". The former might be termed a civilian government and the latter a mili-

tary government. During this period of military government a feudal system grew up, and from then until our glorious restoration in Meiji * many arbitrary taxes were imposed. The people were greatly oppressed by the heavy levies upon them and considerable trouble ensued. The simplicity of the former system was lost in the complexity of the various taxes, each feudal district having its own set. There was no development of a uniform and equitable system for the country, and the imposition and collection of the different taxes were marked by arbitrariness and oppression.

3d period: The first twenty years of Meiji were a period of so-called enlightened despotism, and during the time many improvements were made in the tax system. The main reforms may be briefly noted as follows:

1. The number and kinds of taxes were greatly reduced, thus simplifying the system.
2. The revision of the land tax. This was a great undertaking and required from the 7th of Meiji to the 13th of Meiji for its accomplishment.
3. The payment of taxes in goods or produce was abolished and payment in money established.
4. The rate of the taxes was decreased and a definite date for payment fixed.

4th period: This may be termed the age of constitutional government, lasting from the 22d of Meiji until the present time. With the establishment of communication with the western world and the increasing knowledge of western forms of government, the development of Japan was very rapid, in economic life as well as the social and educational. The improvement of the tax system has been a factor in this development, and the reformation is still going on. The following is a brief outline of the present system:

1. The attitude of the people toward the payment of taxes.

* Meiji is the name of the period of the reign of the last emperor, 1867-1912. Emperors as a corporation never die, even when His Majesty's physical person dies. On the succession of a new emperor the name of the new era is necessarily during his reign made by him, and the reckoning of years begins with it.

There are deep-rooted in the convictions of our people two things that have an important bearing on national life—the feeling of obligation to perform military duty for the defense of the nation and the duty of paying taxes for the support of the nation. In our present constitutional law, it is true, you will find expression of the duty of the people in these regards; but this law merely records the sense of obligation ever present in the minds of the people. Our citizens recognize that if we are to enjoy national life, each member of the state must offer (the Japanese “offer” taxes, rather than “pay” them) his property as well as his blood for the support of the nation: tax payments are as necessary as military service.

2. The tax system of the nation (as distinguished from local taxes) is based upon statutes enacted by the national parliament. There are several kinds of national taxes, both direct and indirect, as will be seen from the following list:

A. Direct taxes

- (1) Soil and land tax
- (2) Income tax (individual and corporation)
- (3) Business tax (a tax upon commerce and trade)
- (4) Inheritance tax (including some gift taxes)
- (5) Mine taxes
- (6) Various registration taxes

B. Indirect taxes

- (1) Several kinds of wine taxes
- (2) Tax on cloth made of silk and cotton
- (3) Sugar tax (crude and refined sugar)
- (4) Japanese souce tax (soy tax)
- (5) Stamp taxes
- (6) Playing card tax
- (7) Tax on passenger transportation

There are also government monopolies of the tobacco, salt, and camphor industries.

By means of the different taxes mentioned above, the people are assessed on various articles of consumption and on the means of communication, as well as upon their incomes. In this way we secure equality and justice in the tax system and also obtain revenue consistent with the taxpaying ability of the people. As in this country, we have an exemption of the minimum amount required for subsistence and there are also

many special exemptions allowed. By means of progressive taxation and surtaxes the burden of taxation is suited to the taxpaying ability.

II. PRESENT TAX PROBLEMS

The following remarks about our present tax system are given merely as my own personal opinion of the situation; I do not know my government's opinion.

1. As shown above, our tax system is made up of many different kinds of taxes. The tax laws have been enacted from time to time, as the necessity for more revenue required, and there are deficiencies in the unity and coherence among them. If I speak strictly, we have no tax "system" in reality; we have only laws for the collection of revenue. I believe these laws must be revised and made into a well-unified system; we must re-write the statutes into a new tax code, wherein each law will have its true and logical relation to the others, in order that there may be neither gaps nor overlapping in our tax system. But this is a very difficult problem, as we see from many another country's tax system. I trust that you gentlemen may show me a solution.

2. We must more and more develop a social-political aim in our tax system.

3. The third need is an improvement of the tax administration. Tax administration is probably the most difficult of all administrative tasks. This difficulty is inherent in nature, since taxation concerns that which, next to life itself, is perhaps mankind's dearest possession. Nobody likes to disclose the amount of his income and the condition of his property. Added to this natural reluctance is the complexity of modern financial relations. In these days social and economic conditions are constantly changing and becoming more complex. This makes it still harder to determine what tax legislation and administration will rightly meet the needs of the times. Tax legislation is difficult, but tax administration is an even more intricate problem. Although it is said that one cause of the French Revolution was the heavy taxes, I think it was more the unjust administration than the burdensomeness of the taxes themselves. Many examples of that sort can be found

in my country's history. I believe that, even though a tax law in itself may be good, it may become bad through mal-administration; and, on the other hand, good administration may greatly overcome the evil effects of a tax law that in itself is bad.

Tax administration is so difficult that in my country we are sorry we cannot secure regularity and uniformity in this; but with us the administration of the laws is left almost wholly to the official's own intelligence and judgment. In our Imperial Diet held several years ago a member maintained in a scathing speech that recently the tax assessor and collector had been doing the tax legislating, and I believe that there was partial truth in his indictment. The position of tax official is an important and difficult one. And the secret of good tax administration lies in the education and training of the officials, as was brought out in the papers at your sessions yesterday. Our problem is to find a way to train and educate them. I hope you will help me in this.

4. The increase of knowledge about taxation among the people as a whole. Although, as I have said, tax administration is a most difficult task, it will be greatly simplified if the taxpayers' attitude is honest and helpful. But helpfulness and honesty can be expected only from a highly civilized and educated people. I realize that it is vain to expect honesty and accuracy from everybody.

To my mind, the information given by the taxpayer is extremely important, since it must ultimately form the basis of assessment. For this reason it is most urgent that we obtain accurate information. I have heard that here, in this country, you use the words "conscience tax", and that the information given by taxpayers is usually correct and is respected by the tax officials as a proper basis for assessment. I admire your people's honesty and have been wondering at it. Presumably it is due to the general development of public morals here. I am sorry that the social conscience of our people is not so highly developed. I would that I might learn a way to teach our people.

5. As Professor Seligman has so well shown, the question of the incidence of taxation is very important as well as very

difficult. Through too great shifting of taxation a tax system may become a great injustice. I should be grateful for your help in learning how the proper incidence may be secured.

6. How far is your tax system a truly democratic one? This is a matter which I have been seriously investigating. This conference of the National Tax Association is, I believe, one example of your democracy. In Japan we must be more and more ruled by the principles of democracy.

In conclusion, I wish briefly to describe the financial side of our revenue system. For a number of years the financial results have been good. Every fiscal year the taxes collected have exceeded the budget estimates, and the estimates have not been low. This is the so-called natural increase in taxes. And here the problem of "Ueberschusswirtschaft" (management of a surplus) is always present.

SEVENTH SESSION

THURSDAY AFTERNOON, NOVEMBER 15, 1917

CHAIRMAN—CHARLES A. SNYDER, PENNSYLVANIA

CORPORATION SESSION

1. SOME UNFAVORABLE ASPECTS OF INDIRECT TAXATION
Charles A. Snyder, Auditor-General, Harrisburg, Pennsylvania
2. DESCRIPTION AND DISCUSSION OF THE RECENT DECISIONS
OF THE UNITED STATES SUPREME COURT IN THE KEN-
TUCKY FRANCHISE TAX CASES
William L. Tarbet, Land and Tax Commissioner, Illi-
nois Central Railroad Company, Chicago, Illinois
3. TAXATION OF MACHINERY AND FIXTURES
J. F. Zoller, Tax Attorney, General Electric Company,
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Carl H. Mote, Secretary Public Service Commission,
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George Vaughan, Special Attorney for the State in Tax
Cases, Little Rock, Arkansas
6. DISCUSSION

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SOME UNFAVORABLE ASPECTS OF INDIRECT TAXATION

CHARLES A. SNYDER

Auditor-General, Harrisburg, Pennsylvania

To prepare a paper on some unfavorable aspects of indirect taxation when one is wedded to the system is quite a difficult task. The commonwealth of Pennsylvania has for years been one of the foremost states in the Union in the collection of its revenue by a system of indirect taxes. It is almost fifty years since any tax upon real property has been levied in Pennsylvania, and for this same period its principal revenues have been raised by means of indirect taxes. That a system is good would seem to be best attested by the fact that the majority of the citizens affected are satisfied with it and prefer it, and that there is little or no agitation for a change except by the theorist and professional agitator. There has been no real agitation for a change of our system of taxation for state purposes during my political career, covering a period of thirty years. True, there has been agitation for larger revenues, for taxation of new subjects or for the exemption of others, but the system as a whole has been approved by the people of the commonwealth.

The division of taxes into direct and indirect is based on no real intrinsic difference. It is, as one authority says, a classification for convenience' sake, adopted upon a rough observation of conspicuous, or apparently conspicuous, differences in the mode of levying taxes and nothing more. A direct tax is so called because it is charged directly upon the taxpayer and is thus taken from his income. An indirect tax is one levied upon the individual who pays in the first instance, but who passes the charge to some one else, who may again pass it on until it finally reaches the subject who bears the burden. It is easily to be seen that the same tax may in one case be direct and in the other case indirect. The distinction lies not in the tax itself, but in the person who is called upon to pay the tax; i. e., the actual or the ultimate payer.

The most important indirect tax collected in Pennsylvania

is upon the actual value of the capital stock of corporations, limited partnerships, and joint stock associations, domestic and foreign. From this tax is realized a large percentage of the revenue of the commonwealth. In the case of the smaller corporations, where the tax is relatively small, it is questionable whether the corporation itself pays the tax or whether it is added to the article produced or to the services rendered. Of course, if the tax is not passed to the consumer it ultimately reduces the dividends of the stockholder and is, therefore, an indirect tax. As a general proposition, taxes upon corporations producing consumable articles are shifted to the consumer and taxes upon a public service company are shifted to the consumers of the public service. The corporation giving the service or producing the article is simply a tax collector. It necessarily follows that the tax must be recovered as a part of the cost of service or the service must ultimately fail. This brings us to one of the evils of the system of indirect taxes.

It is a well known fact that in many instances where a tax has been placed upon a particular article or service the cost of the article or service has been increased largely in excess of the actual tax imposed and the difference between the tax and the increased price flows into the pocket of the producer in the form of profits. If the truth were known, we would find that taxes imposed by the government have poured much more money into the hands of corporations and individuals in the shape of unjust profits than they have taken from the stockholders in the form of dividends.

We have at present very forcible examples of this unjust collection of money under the guise of taxation. Under the act of Congress of October 3, 1917, a war tax of \$1.00 per 1,000 has been imposed upon all cigars heretofore retailing at five cents. A cigar of this grade was usually purchased for about \$35 per 1,000. It retailed for \$50 per 1,000. With the imposition of the war tax one would suppose that this cigar would cost the retailer \$36 per 1,000, and that the smallness of the tax might be shared between the wholesaler and retailer. I find, however, upon investigation that this cigar now costs the retailer from \$37 to \$42.50 per 1,000, which necessitates a raise of price to the consumer from five to six cents and raises

the retail price per 1,000 from \$50 to \$60. It is easily seen that, while the government has imposed a tax of \$1.00 per 1,000, the wholesaler and retailer are collecting \$10 per 1,000 from the consumer.

Another instance was brought to my attention a few days since when I had occasion to purchase a musical instrument. The price of this instrument was standard; say, \$100. It had not varied for a number of years. Imagine my surprise when I was informed that this same instrument would cost me \$110. I inquired the reason and was informed it was due to the war tax imposed by the government. Upon calling the attention of the dealer to the fact that the tax was three per cent of the sale price, and that, therefore, the cost should not be more than \$103, I was informed that the company manufacturing this instrument had intended to raise the price of this particular article even though no war tax had been imposed by the government. Whether or not this is true matters not. The fact remains that from the individual not familiar with the act of Congress an additional profit of \$7.00 was collected under the guise of a war tax.

This naturally leads us to inquire whether the sum collected from the consumer for taxation is not much greater than he realizes and that he only acquiesces in the system because he is ignorant of its cost. There is no question that no one realizes the amount which he yearly pays in indirect taxes. The satisfaction of the system lies in the fact that the payment is unconsciously made and the individual is serene in the belief that his taxes are relatively small. I will agree that theoretically the system may be all wrong. To my mind, however, government is not to be run so as theoretically to bring the greatest good to the greatest number, but to bring the actual greatest good, and this includes peace of mind, absence of annoyances, and the fear of the tax collector. What is worse on a man's disposition than execution on account of a few dollars which cannot at the moment be paid by the man who owes them? Many individuals undoubtedly prefer to pay \$18 a year for taxes at the rate of five cents per day, rather than \$10 at any given time. Indirect taxes, in this respect, operate somewhat like business upon the instalment plan. As every one realizes, articles purchased on that plan are a great deal more expen-

sive than if purchased for cash. So far as this objection to indirect taxes is concerned it may, however, be said that the fault lies not with the tax itself but rather with the system for its collection, and the wide possibilities for abuse. If the system of collection could be perfected so that the tax imposed would take out of the pockets as little as possible over and above what it brings to the public treasury, this objection to the indirect tax would be removed.

Another unfavorable aspect of indirect taxation is that the unconscious payment of taxes precludes a free discussion of the subject. The ordinary citizen is in no position to speak intelligently on this question. He knows nothing about the amount realized from this system and the cost to the individual. Where the tax is levied directly he knows at once what he is called upon to contribute, and is able to register a protest against what he may contend is exorbitant taxation.

Every citizen of a government who receives the protection of that government should contribute to its support. No better system has ever been devised to secure this contribution than indirect taxation. Under this system the property owner, the man who owns no property, the foreigner, all are called upon to pay their share. The question is, however, whether the shares are equitably distributed. One would naturally suppose that those best able to do so should be called upon to bear the greatest burdens. I am inclined to believe that in most cases an indirect tax will operate equitably, and that all individuals will automatically contribute according to their respective means. But this is not true where the tax is imposed upon certain consumable articles or necessities. In such cases the amount of consumption and, therefore, the amount of the tax are measured not by a man's wealth, but by his individuality, by the amount he personally consumes. In the case of necessities, I take it as established that the amount of consumption necessary is measured by the character of labor performed, and that in many cases the person least able to pay a tax must consume the greatest amount to enable him properly to perform that labor. This to me seems to be the most vital objection to indirect taxes. But it is questionable whether any system can be devised, be it direct or indirect, where the same result would not be obtained.

DESCRIPTION AND DISCUSSION OF THE RECENT DECISIONS OF THE UNITED STATES SUPREME COURT IN THE KENTUCKY FRANCHISE TAX CASES

WILLIAM L. TARBET

Land and Tax Commissioner, Illinois Central Railroad Company,
Chicago, Illinois

These three decisions handed down February 11, 1917, to be reported in 244 U. S., were on appeals taken by the Louisville and Nashville Railroad Company and the Illinois Central Railroad Company, and on cross appeals by the state in those two cases and direct appeal by the state in the Louisville and Interurban case, from decisions by Judge Cochran in the federal district court, and they concluded a series of events which should be outlined to show why the railroad companies were justified in bringing these suits, and to give this presentation its proper setting.

From 1892 to 1917 Kentucky statutes (sec. 4081) provided for an annual equalized assessment of the so-called tangible property of the railroad companies by the state railroad commission and a separate assessment of so-called franchises by the state board of valuation and assessment, consisting of the state auditor, state treasurer, and secretary of state. The tangible property was generally assessed in the fall and the franchise in the spring, so the railroad companies had to pay taxes to state, county, city, and numerous other taxing districts twice a year. According to the statute, as generally understood, the franchise assessment was to be arrived at by first fixing a valuation on "capital stock"; that is, total taxable property, tangible and intangible, of an interstate railroad system; then apportioning such valuation to Kentucky on a railroad miles basis; and finally deducting from such Kentucky portion the last Kentucky assessment of railroad tangible property; the remainder being the assessment of the franchise. In actual practice the board occasionally worked backwards, and simply

fixed the franchise assessment at \$8,000, or some other easy multiplier, per mile, leaving it to their clerks to find therefrom the value of the "capital stock" in Kentucky at their leisure, and did not bother to determine the value of "capital stock" either of the interstate system or that part in Kentucky. The form furnished by the state for reports to the state auditor calls for the amount of net income earned in Kentucky, and when this information was given by the carrier the board sometimes capitalized the Kentucky net to find a value of Kentucky "capital stock", making no effort to find a system valuation. Such was the varied practice.

This two-assessment plan amounted only to dividing the "capital stock" assessment arbitrarily into two parts. It doubled the expense and trouble of computing the taxes and making taxpaying vouchers, and had no compensating advantages that justified its continuance; so some of us, in 1900, arranged with the railroad commission, the board of valuation and assessment, and certain committees of the general assembly, then in session, to amend the statutes so that railroads would thereafter be assessed but once a year, by one board, and in one gross sum that would cover all tangible and intangible taxable property. All concerned were in the office of the railroad commission in Frankfort one morning, putting the finishing touches on the amendments when it was announced that Governor-elect William Goebel was shot. That attempt to change Kentucky's method of assessing railroads ended then and there.

The two boards continued to make their assessments as theretofore, the franchise assessment being about one-fourth the "capital stock" valuation, which was for some of us generally excessive and not fairly equalized. We grumbled and protested; filed and argued our objections; registered our complaints—and paid our taxes. So it was until 1912, when newly elected state officers, Bosworth, Rhea, and Crecelius were installed for four years. In due time they issued notices of tentative 1912 franchise assessments, the magnitude of which indicated that some unprecedented and sinister influence was at work. The Chesapeake and Ohio franchise assessment was raised from \$2,745,350 to \$25,000,000; the Cincin-

nati, New Orleans and Texas Pacific from \$3,559,320 to \$13,500,000; the Illinois Central from \$4,510,320 to \$21,500,000; the Louisville and Nashville from \$11,899,200 to \$52,500,000. When we appeared before the board to file and argue objections to these assessments we were confronted by Justus Goebel, of Covington, and John L. Rich, an attorney, also of Covington, who undertook to sustain said tentative assessments. This extraordinary proceeding may be best explained by the affidavit of Milton H. Smith, to be found in the transcript of record of one of these cases. From it I quote:

"He states he has reason to believe and does believe that the assessment of complainant's franchise herein complained of is not only a false assessment, grossly in excess of the actual value of the franchise alleged to have been assessed, and arbitrarily and capriciously made without any reason for the conclusion reached, except a desire to force complainant to pay an undue proportion of the state's revenues, but the members of the board of valuation and assessment were illegally influenced and coerced into making said assessment by one Justus Goebel. . . . The said Goebel is not an officer nor an employe of the state of Kentucky; is not a lawyer nor an accountant, nor one who has had any experience in valuing railroads or other similar properties; nor has he had any experience to qualify him in any sense as a tax expert. He is a man, however, full of vindictive animosity, and is now and has been for many years fanatically hostile to the public service corporations, especially the steam railroad companies operating their lines in the state of Kentucky.

"Said Goebel stated . . . 'My interest in the work just completed by the board was, and is, different from, and greater than, that of any man in Kentucky or elsewhere—even though he may have been connected with the work. Love of my state and love for and memory of my assassinated brother, whose brainwork constructed and whose blood stained the statutes which made it possible to do what the board of valuation and assessment has just completed, have compelled of me the service I have rendered in the matter, and, without official duty resting on me, I have given untiringly and almost constantly more than five months of time, energy, and study to these assessments, in the interest of the state and its people, to the exclusion of every other interest.' "

The said Goebel and Rich continued to be associated with that board throughout its four years' incumbency, and their influence was reflected in each of the four annual assessments made by it.

After months of protest on the part of the railroad companies, the board made final 1912 assessments of franchises

somewhat less than the tentative figures, but still so exorbitant that the said four companies petitioned the federal district court for restraining orders and sued for injunctions. Restraining orders were issued conditioned on the companies first paying such amounts, as franchise taxes, as the court deemed reasonable. Injunction suits in respect of the 1912 assessments, and later other suits in respect of the 1913 assessments were tried in due course and final decrees were rendered by Judge Cochran. The 1912 and 1913 Illinois Central cases were consolidated and appeals were taken by that company. The Louisville and Nashville appealed its 1913 case; and cross appeals were taken by the state in both Illinois Central and Louisville and Nashville cases. The state appealed from the decision of the district court in the Louisville and Interurban and Louisville Railway cases, which, being similar, were treated together. There being no diverse citizenship in the Louisville and Nashville and Interurban cases they were considered first. Jurisdiction in the Illinois Central case depended on both the federal question and diverse citizenship and, therefore, it was considered after the other two. The principal questions involved in the Louisville and Nashville and Interurban cases characterized the Illinois Central cases also, and were all elaborately argued in the Illinois Central consolidated case; but, the other two cases being first considered by the Supreme Court because of the question of jurisdiction, the court's opinions as to the questions common to all three cases were written in the Louisville and Nashville and Interurban cases.

A careful reading of the opinions of the district court in these cases gives the layman the impression that, mindful of the opinion written by Mr. Justice Holmes in the Coulter case (196 U. S.), the district judge was so concerned with the question of equalization that he failed to give to some of the other questions involved the consideration they deserved; and this attitude is apparently reflected somewhat in the opinions of the Supreme Court, except as to the "rough-and-ready reasoning" of the lower court in dealing with Louisville and Nashville figures.

FEDERAL JURISDICTION

The state contended that there was no federal question involved; that the bills stated no cause of action under either state or federal laws; that the plaintiffs had an adequate remedy at law under section 162, Kentucky statutes; that the bills showed no equity on their face; and that the suits were suits against the state, in violation of the constitutional rule and for which there is no provision in Kentucky law. The district judge treated this question of federal jurisdiction at length in his opinion in the Louisville and Nashville 1912 case (209 Fed. 385-406), but the Supreme Court treated it especially in its decision of the Louisville and Interurban case. It held:

“that a suit to restrain a state officer from executing an unconstitutional statute, in violation of plaintiffs’ rights and to his irreparable damage is not a suit against a state; ¹ also that the contention of plaintiffs, set forth in their respective bills of complaint, that the action threatened by the state officers, if carried out, would violate the equal protection provision of the fourteenth amendment, presented a real and substantial controversy under the constitution of the United States, ² which (more than \$3,000 being involved) conferred jurisdiction upon the federal court, irrespective of the citizenship of the parties; ³ and the jurisdiction of that court, and of the Supreme Court on appeal, extended to the determination of all questions involved in the case, including questions of state law, irrespective of the disposition of the federal question, or whether it be found necessary to decide it at all.” ⁴

CORRECT METHOD OF FINDING FRANCHISE ASSESSMENT IN
KENTUCKY

Although this part of the decisions relates primarily to the Kentucky statute, it is of interest in any state whose statute prescribes a similar method of arriving at an assessment. Sections 4077 *et seq.* of the Kentucky code provide for the assessment of franchises. Of these sections the Supreme Court, putting it mildly, says they are inartificially drawn, and Judge Cochran said: “A survey will bring out a number of

¹ *Ex parte Young*, 209 U. S.

² *Reagan v. Farmers’ L. and T. Co.*, 154 U. S.

³ *Raymond v. Chicago Traction Co.*, 207 U. S.

⁴ *Silar v. L. and N.*, 213 U. S.

imperfections therein and show that it is a rather crude piece of legislation." Said sections (406-433) taken together are really about as intelligible as a cubist picture; but, after an exhaustive analysis covering some 27 pages, Judge Cochran seems to have concluded that the correct method for finding an assessment of the franchise of an interstate railroad in Kentucky, under the present law, is:

1. Find the value of the "capital stock" of the system, including the mileage operated, owned, leased, or controlled by the carrier company whose franchise in Kentucky is to be assessed. This may be done either by the stock and bond method or the net earnings method.
2. Deduct any excess value either within or without the state.¹
3. Apportion the remainder to Kentucky on the basis of miles operated, owned, leased, or controlled.
4. Add said excess value if its situs be within the state.
5. Deduct the value of so much of the controlled mileage as is in Kentucky.²
6. Equalize with the average assessment of the general property in the state.
7. Deduct the equalized assessment of tangible property.
8. The remainder is the equalized assessment of franchise against which taxes should be extended.

Judge Cochran held in the 1912 Louisville and Nashville case (209 Fed., foot of page 384) that: "The plaintiff is entitled to the relief it seeks if it does no more than make good the other claim, to wit, that the board in making the assessment did not follow the statute." And again, in regard to the duty of the court to set aside an assessment and to substitute its judgment for that of the board, for reasons other than fraud, he said (230 Fed. 197): "If, then, it is the duty of the court to substitute its judgment for that of the assessing board, and to set the latter aside in making the assessment, if it has adopted fundamentally wrong principles, clearly it not only has the right, but it is its duty, to do so if it determines that the board has not followed the method prescribed by the statute under which it acted and from which it obtained its power to act at all."³ And again (209 Fed., top of page

¹ 209 Fed. 432.

² 230 Fed. 204.

³ *L. and J. Ferry Co.*, 188 U. S. 385; *Fargo v. Hart*, 193 U. S. 490; *Coulter v. Weir*, 127 Fed. 897.

439) : "But it [the Board] did not proceed along right lines, and its assessment must, therefore, be held void."

Judge Cochran's conclusion that the method of fixing the value of the franchise of an interstate railroad in Kentucky prescribed by the statute was to first find the value of the capital stock of the system operated, owned, leased, or controlled and apportion that to Kentucky, and that an assessment arrived at by any other method must be held void, is doubtless the correct conclusion. Nevertheless, in his final decree in the 1912 Illinois Central case, in which it was shown that the assessment was made by capitalizing so-called *Kentucky* net income, although he admitted (Transcript of Record No. 642, page 161) that the board "did not arrive at it by the statutory method", yet he declined to hold it void. The Supreme Court seems to have ignored this point entirely.

NOTICE OF ASSESSMENT BY THE BOARD TO THE CORPORATION

This feature of the decisions is also of interest in all states where the board must give to the company notice of the amount of the tentative assessment and opportunity to file and argue objections thereto. Section 4083 of the Kentucky statute provides that "It shall be the duty of the auditor, immediately after fixing such value by the board, to notify the corporation of the fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation and may introduce evidence, and the chairman of the board is hereby authorized to summons and swear witnesses, and after hearing such evidence, the board may change such valuation as it may deem proper, and the action of the board shall be final." Judge Cochran held¹ that the formal notice used by the board, showing only the valuation of the Kentucky portion of capital stock, the tangible assessment deducted, and the remainder or franchise valuation, is not such notice as the statute requires, but that it was the duty of the board to enter on its records the preliminary assessment, showing the different steps in the method pursued by it in making it, so that an inspection of its records would give full information in regard to such matters.

¹ 209 Fed. 442-3.

And I gather that the court's opinion is that in the absence of such complete record the company whose franchise is assessed has the right to demand that all steps taken in arriving at the assessment be fully shown by the board; and if the board fails or refuses to give such information it fails to give such notice as the statute requires. He further held that the board had no right to use the company's report to its stockholders, or its report to the Kentucky Railroad Commission, or other such statistical statement, not made for assessment purposes, without giving the company an opportunity to explain such data.

SECURITIES HELD IN THE TREASURY AND OTHER ASSETS HAVING
NO CONNECTION WITH THE OPERATED RAILROAD SYSTEM,
EXCEPT COMMON OWNERSHIP

The railroad company, relying on *Fargo v. Hart*, 193 U. S. 490, and *Coulter v. Weir*, 127 Fed. 897, contended that the value of such assets of the corporation should first be deducted from a system value found by the stock and bond method because they are no part of the operated unit of the interstate plant, but are covered by the aggregate capitalization. If such assets are held outside Kentucky they are not taxable in Kentucky; if they have their situs in Kentucky they are taxed separately from the railroad, or should be. The district judge, as I gather, confused this proposition with the *excess value* mile for mile of the operated system or "organic unit" within or without the state. He seemed not convinced as to the value of such assets, or as to whether or not they were no part of the railroad unit; nor was he certain whether or not the board in making its assessments had made due allowance for such assets. At all events he refused us relief on this score, although this company showed that its corporate capitalization covered over \$40,000,000 worth of such assets. The Supreme Court confirmed the decree of the district judge, but said:

"The claim for an allowance by reason of the treasury securities and the terminals situate in other states is based upon the principle laid down in *Fargo v. Hart* and similar cases,¹ to which we adhere, that a state cannot tax property outside of its jurisdiction belonging to persons domi-

¹ 244 U. S., *I. C. v. Greene et al.*

ciled elsewhere, and that although the fact that the property is *part of a system* and has its actual uses only in connection with other parts of the system may be considered by the state in taxing that portion of the system which is within its borders, yet the *notion* of organic unity must not be made the means of unlawfully taxing property without the state."

Neither court seems to have had any clear idea as to the nature of the assets in question, or to realize that they are no part of the "organic unit" or operated railroad, and have nothing whatever to do with excess value thereof, mile for mile, within or without the state.

The established attitude of the courts toward tax cases is manifested in the following language of the Supreme Court in its decision in the Illinois Central case:

"The District Court properly held that the action of the board must be sustained unless it was made to appear that *they* had adopted a fundamentally wrong principle, or had been guilty of fraud. It held further, that no fundamentally wrong principle was involved in determining whether such a railroad system should be valued on the capitalization-of-income or on the stock-and-bond plan; or, if the former, what rate of interest should be used in capitalizing, or how many years' earnings should be considered, or *what was in fact the amount of net income for a given year*; or, if the stock-and-bond plan was adopted, what was the value of the stocks and bonds; and that on these and similar matters the action of the Board, in the absence of fraud, was binding upon the court. In this we concur."

This language seems hardly consistent with the court's holding that if the board adopted fundamentally wrong principles its assessment is void. It appears highly important that we have intelligent and honest state officials capable of correctly and rationally determining these important matters with which the courts refuse to meddle.

EQUALIZATION

We come now to the most satisfactory feature of these decisions—60 per cent equalization. In respect to this we find no uncertain note. The decisions are rendered in pursuance of the following provisions of the Kentucky constitution:

Section 171 provided in respect of taxes that "They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax."

Section 172: "All property, not exempted from taxation by this constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished, as may be provided by law."

Section 174: "All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses, or franchises."

Section 182: "Nothing in this constitution shall be construed to prevent the general assembly from providing, by law, how railroads and railroad property shall be assessed and how taxes thereon shall be collected."

There is no statutory provision in Kentucky for equalizing assessments of general property by county assessors, railroad tangible property by the railroad commission, and railroad franchises by the state board.

In the case of *Coulter v. Louisville and Nashville*, 196 U. S. 599, in 1905, involving equalization of a Kentucky assessment of a railroad franchise, the railroad company was granted relief by Judge Cochran in the district court.¹ The state appealed and the Supreme Court reversed the decree. Mr. Justice Holmes wrote the opinion, in which he said: "Inequality, we repeat, is nothing, unless it was in pursuance of a *scheme*." This view was taken by Mr. Justice Miller in *Supervisors case*, 105 U. S., where he held that relief would not be given unless it was proved that assessors "habitually and intentionally, or by some rule prescribed by themselves or by someone whom they were bound to obey" undervalued real estate. The same view was held by Mr. Justice Peckham in *New York state case*, 179 U. S. 279. In the *Coulter case* Mr. Justice Holmes found insufficient evidence; and obviously it was, and always is, difficult, if not impossible, to prove that undervaluation by assessors is due to a "*scheme*", or "rule prescribed by themselves or by someone whom they were bound to obey". In the Kentucky cases under consideration we fortunately had the

¹ 196 U. S. 599.

report of December, 1913, made by the state tax commission to the general assembly, which stated that no pains had been spared to ascertain the average ratio of the assessment of farm lands throughout the state to their true value, and they found it to be 52 per cent, but the range in separate counties was from 30 per cent to 80 per cent. It found also that the total assessment of personalty such as the assessor cannot see was about 10 per cent of its aggregate value in the state. Judge Cochran was very clear as to our right to have our assessments equalized at not to exceed 60 per cent, and Mr. Justice Pitney was equally frank and certain on this point. His opinion in the Louisville and Interurban case fully covers this feature. The Kentucky Court of Appeals, in *Louisville Railway Company v. Commonwealth*, 105 Ky. 710, held that the only remedy for inequality in taxation was to select the right sort of assessors and bring up the assessment of general property to full value. Referring to this Mr. Justice Pitney said: "This, while admitting the wrong, merely denies judicial relief, and is not binding upon the federal courts."

Kentucky's constitution and statute require assessment at "*fair cash value*", and of this Mr. Justice Pitney said:

"The principal, if not the sole, reason for adopting '*fair cash value*' as the standard for valuations, is a convenient means to an end—the end being equal taxation. But if the standard be systematically departed from with respect to certain classes of property, while applied as to other property, it does not serve but frustrates the very object it was designed to accomplish. It follows that the duty to assess at full value cannot be supreme in all cases, but must yield where necessary to avoid defeating its own purpose."

Mr. Justice Pitney unreservedly concurred in the well-known decision of Judge Taft in the Tennessee Railroad tax cases (88 Fed. 350), and freely quoted from the opinion therein rendered.

The fourteenth amendment guarantees to all persons and corporations equal treatment by all departments of state and municipal governments, or by those acting under and for those governments, in all matters, including taxation. The district court granted each of the plaintiffs equalization under this federal guarantee of equal treatment, but the Supreme

Court on appeal granted them equalization under the provisions of the Kentucky constitution and not because of the federal guarantee in the fourteenth amendment. This, I take it, is what is meant by the statement that they did not find it necessary "to decide the federal question". The action threatened by the state officers was in violation of the Kentucky constitution, and it was not necessary to decide whether or not it was also in violation of the fourteenth amendment. Had the federal court failed to find in the state constitution or statute good and sufficient ground for granting us the relief to which it found we were entitled, then, possibly, it would have reached the same conclusion because we were threatened with a violation of the fourteenth amendment; that is, the court might then have "decided the federal question". As it was, Mr. Justice Holmes, Mr. Justice Brandeis, and Mr. Justice Clarke dissented.

While many deem it expedient to tax at a special low flat rate those classes of personalty which the assessors *cannot* find or see, yet in view of these decisions it would seem to be an advisable, if not a necessary protection to individuals and corporations that state constitutions provide for equal taxation in respect of all realty and all personalty which the assessor *can* find and see.

It is due the state of Kentucky to say that, whereas from 1912 to 1916 it had a state board superior to none, it now has one of the best in the country, and consequently we expect it will soon endeavor to secure as a substitute for its crude franchise tax law a model piece of legislation that will not only do credit to the commonwealth but will in the most efficient way secure justice to all taxpayers.

TAXATION OF MACHINERY AND FIXTURES

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If, on the one hand, tangible personal property should be taxed in the same manner as real estate, then the different laws making machinery personalty or realty are of no practical importance from a taxation standpoint. If, on the other hand, tangible personal property should be classified and taxed in a different manner than real estate, it becomes important to know under the law in the different jurisdictions what machinery is classified as real estate and what machinery is classified as personal property, in order to ascertain what changes in the law should be made to bring about equitable and practicable taxation of machinery.

This paper is prepared upon the assumption that it is inequitable and impracticable to attempt to tax tangible personal property at the rates which now generally prevail against real estate in the different states. As authority for this assumption I quote from an address delivered at the tenth annual conference of this association by Professor Charles J. Bullock, of Harvard University, as follows:

"Tangible personal property continues in all the states, except Minnesota, to be taxed like real estate. Yet it would seem that in a proper scheme of classification this kind of property should be segregated and taxed at a special rate. It consists, for the most part, of merchandise, machinery, and live-stock, property which may be assumed to be employed in trade and to yield an ordinary trade profit which may be taken to be about 10 per cent. From property of this description, which is mobile and subject to severe interstate and even international competition, it is doubtful if any of our states ever has collected, or can expect to collect, taxes that absorb more than 10 per cent of the income. Since \$100 of such property may be assumed to yield an average income of about \$10, the proper tax rate would be 80 cents or \$1.00 per \$100; but the rates prevailing in our states are usually double these figures. The result is general undervaluation, by which tangible personalty as a class is assessed at from 30 to 60 per cent of its true value, while in individual cases assessments range from nothing up to 100 per cent, producing the

grossest inequalities between taxpayers. The introduction of better methods of taxing intangible property has indeed simplified and improved somewhat the taxation of tangible personalty, the efforts of efficient state tax commissions have changed things for the better, but the problem has not been solved.

"For manufacturing and commercial states the question is one of the greatest importance. In these commonwealths public expenditures are usually heavy and tax rates are high. Strict enforcement of a tax amounting to \$1.50 to \$2.50 per \$100 would not be long tolerated by public opinion, since it would drive so much business to other states. The rational, expedient, and straightforward thing to do is to reduce the tax to a figure that can be collected, and then enforce the law in all cases without fear or favor. When expenditures are small and the general tax rate does not equal or exceed \$1.00 per \$100 the matter may not be of importance; but elsewhere the proper classification of tangible personal property is becoming increasingly desirable and necessary."

Economically machinery is tangible personal property. From a legal standpoint machinery is personal property or real estate according to the law (common or statutory) of the jurisdiction in which the machinery is taxable. Any state has the power to make personal property real estate or real estate personal property for taxation purposes. (*Johnson v. Roberts*, 102 Ill. 655; *Shelbyville Water Co. v. People*, 140 Ill. 545; *Smith v. New York*, 68 N. Y. 552; *People v. Board of Assessors*, 39 N. Y. 81).

Accordingly, in New York many articles of tangible personal property are taxable as real estate because of the definition of the terms "land" and "real estate" in the tax law. In Illinois machinery, including power generating apparatus, is taxable as personal property because of a statutory provision, regardless of the true character of such property. Kentucky has recently passed a statute classifying both agricultural and manufacturing machinery without regard to its character as realty or personalty and taxing it at a rate lower than that prevailing against real estate in general. A majority of the states, however, do not attempt to define machinery as either personalty or realty or to classify it for the purpose of taxing it at a rate less than that prevailing against real estate.

Such states simply provide in a general way for the taxation of real estate and personal property, leaving it for

the courts to decide under the common law what machinery is personalty and what machinery is realty. In the states where the common law rule prevails it is necessary to know what that rule is, because in many cases debts are deductible from personal property value in ascertaining the taxable value, while they are not deductible from real estate value. In Wisconsin and also in New York, so far as manufacturing corporations are concerned, income taxes are payable in lieu of taxes upon personal property but in addition to taxes upon real estate. So it is becoming exceedingly important in many instances to determine the character of machinery as personalty or realty under the common law rule, in order to ascertain its status for the purpose of taxation in certain states.

The common law rule as to what machinery is personalty or realty is covered by what is known as the "law of fixtures". If anyone should attempt to ascertain what fixtures are personalty and what real estate by merely examining the multitudinous number of decisions rendered upon the subject, the result would be utter and endless confusion and the inevitable conclusion that such decisions were irreconcilable and made with no regard for the doctrine of *stare decisis*. In the case of *Noyes v. Terry*, 1 Lansing (N. Y.) 219, the court made the following statement:

"The law of 'fixtures' is confessedly the most uncertain title in the entire body of our jurisprudence; and a judge might in any given case decide either way without much danger of having his judgment impeached, or of failing to find some authority to support it. It follows that almost every case that is presented must be tested and determined by the special facts which it exhibits."

If, however, the subject is approached with a knowledge of the history of the law in its development in this country, together with a knowledge of the fundamental principles involved, so that each case may be read with these things in mind, the leading cases of the different jurisdictions are not irreconcilable and the rule in one common law jurisdiction in this country does not differ fundamentally from that in another jurisdiction. In the first place it should be borne in mind that the original common law rule of England which

“subjected everything affixed to the freehold to the law governing the freehold”, probably never prevailed in this country. It has been stated repeatedly by our courts that “the English common law is not to be taken in all respects to be that of America. Our ancestors brought with them its general principles and claimed it as their birthright, but they brought with them and adopted only that portion which was applicable to their situation.” [*Dubois v. Kelly*, 10 Barb. (N. Y.) 496-501.] In this country the law of fixtures has “grown up into a system of judicial legislation, so as almost to render the right of removal of fixtures a general rule, instead of being an exception” (*Dubois v. Kelly*, *supra*); or, in other words, it would appear to be the rule when the fixture is to be deemed personalty and the exception when it is to be deemed realty. The common law rule of fixtures is the same between the following parties: (a) vendor and vendee; (b) grantor and grantee; (c) mortgagor and mortgagee; (d) heir and personal representative of deceased.¹

The leading American cases appear to have reached the conclusion that there is no one test that will determine that a fixture has become a part of the freehold but such determination depends upon the united application of the following elements: (1) actual annexation to the realty, or something appurtenant thereto; (2) appropriation to the use or purpose of that part of the realty with which it is connected; (3) the intention of the party making the annexation to make the article a permanent accession to the freehold.²

¹ *Buckley v. Buckley*, 11 Barb. (N. Y.) 63; *Snedeker v. Warring*, 12 N. Y. 170; *Walder v. English*, 137 A. D. (N. Y.) 43; *McFadden v. Allen*, 134 N. Y. 490; *Murdock v. Gifford*, 18 N. Y. 31; *Preston v. Briggs*, 16 Vt. 128; *Williams Firth Co. v. South Carolina Loan and Trust Co.*, 122 Fed. 569.

² *Teaff v. Hewitt*, 1 Ohio St. 511; *Bemis v. First Nat. Bank*, 63 Ark. 625; *Hacker v. Munroe*, 176 Ill. 384; *Binkley v. Forkner*, 117 Ind. 176; *Thompson v. Smith*, 111 Iowa 718; *Dodge City Water Co. v. Alfalfa Land Co.*, 64 Kan. 247; *Brownell v. Fuller*, 64 Nebr. 558; *Brearley v. Cox*, 24 N. J. L. 287; *Ward v. Kilpatrick*, 85 N. Y. 413; *McRea v. Troy Cent. Nat. Bank*, 66 N. Y. 489; *Fitzgerald v. Atlanta Home Ins. Co.*, 61 A. D. (N. Y.) 350.

ANNEXATION

With the exception of certain well recognized instances, there must be actual annexation to the freehold in order for any fixture to become a part of the realty.¹

The doctrine of constructive fixtures or property not annexed to the freehold though used in connection with it was early repudiated and actual annexation required to convert personal property into realty. Upon this question Judge Kirkland in an early case [see *Walker v. Sherman*, 20 Wend. (N. Y.) 636, 652] said:

“The Reasoning of Mr. Dane, and of the learned Judge in *Farrar v. Stackpole* (6 Green 154), before cited, . . . does not appear to be sustained by authority, when it seeks to raise a general doctrine of constructive fixtures from the moral adaptation of what is in fact a mere movable, to the carrying on a farm or factory, etc., however essential the movable may be for such purpose. The argument in that shape proves too much. Such adaptation and necessity might be extended even to the use of domestic animals on a farm, and certainly to many implements in a manufactory which could never be recognized as fixtures, without utterly confounding the rule by which the rights of the heir or the purchaser have been long governed.”

It has accordingly been held that the weight or size of a machine is no criterion in determining whether or not the machine is to be considered as a part of the realty. Machines kept in their places by their weight alone have been held as a general proposition to constitute personal property and not real estate.² In the case of *Wells v. Maples*, *supra*, it was held that a shingle machine and planer, though used as a part of a saw mill, were personal property as a matter of law because

¹ *Jermyn v. Hunter*, 93 A. D. (N. Y.) 175; *Potter v. Cromwell*, 40 N. Y. 287; *McRea v. Central Nat. Bank of Troy*, 66 N. Y. 489; *Walker v. Sherman*, 20 Wend. (N. Y.) 636; *Goddard v. Chase*, 7 Mass. 432; *Farrar v. Chauffetete*, 5 Denio (N. Y.) 527; *Cosgrove v. Troesch*, 62 A. D. (N. Y.) 123; *Beardsley & Kirkland v. Ontario Bank*, 31 Barb. (N. Y.) 619.

² *Roddy v. Brick*, 42 N. J. Eq. 218, 225; *Re Trevy*, 14 L. R. (N. S.) 193; *Rogers v. Brokaw*, 25 N. J. Eq. 496; *Holbrook v. Chamberlain*, 116 Mass. 155; *Cole v. Roach*, 37 Tex. 413; *Taffe v. Warnick*, 3 Blackf. (N. Y.) 111; *Tobias v. Francis*, 3 Vt. 425; *Taylor v. Townsend*, 8 Mass. 416; *Wells v. Maples*, 15 Hun (N. Y.) 90.

they were not annexed to the realty. In the opinion of that case the court said:

"The planer is not fastened to anything, but is held in place by its own weight. It is connected with the machinery by a belt that can be slipped off; and that is all the connection. It can be taken up and set on one side, and this had been done several times.

"The shingle machine stands on a box, the size of the machine, made of four-inch plank, about 16 inches high. It is not framed to the floor, nor fastened to the floor except that on one side there is a strip so that it cannot slip. A portion of a post in the building was cut to make room for the machine, and the machine is wedged into this place.

"The shingle machine was placed in the mill for permanent uses, for custom work, as one of the original owners says. We do not understand by this testimony that the witness states that they intended 'to make a permanent accession to the freehold'. (*Potter v. Cromwell*, 40 N. Y. 297.) The fastening of the shingle machine was to prevent it from moving.

"We think that the learned justice was correct in holding under these circumstances that the planer and shingle machine were personal property."

Connection with the motive power by belting is not sufficient to make a machine a part of the realty.¹ The rule requiring actual annexation in order to constitute personal property a fixture and part of the realty, together with the recognized exceptions to the general rule, are concisely stated by Justice Allen in the case of *Beardsley v. Ontario Bank*, 31 Barb. (N. Y.) 619, 629, in the following language:

"Fixtures are personal chattels annexed to land, which may be severed or removed by the party entitled to them, against the will of the owner of the freehold. 'The term fixtures is one denoting the reverse of its name.' The general rule is that all things which are attached to the freehold or annexed to the land become a part of it, if the annexation be made firmly and with an intention that it shall be permanent. Ex-

¹ *United States v. Friction-Match Mach.*, 1 Haskell (U. S.) 32; *Shepard v. Blossom*, 66 Minn. 421; *Atlantic Trust Co. v. Atlantic City Laundry*, 64 N. J. Eq. 140; *Scheifele v. Schmitz*, 42 N. J. Eq. 700; *Kendall v. Hathway*, 67 Vt., 122; *Haggert v. Brampton*, 28 Can., 174; *Patterson v. Johnson*, 10 Gr. Ch. (Ont.) 583; *Goodeham v. Denhouse*, 18 Up. Can. Q. B. 203; *Sun Assurance Co. v. Taylor*, 9 Man. 89; *Taylor v. Townsend*, 8 Mass. 416; *Smith v. Whitney*, 147 Mass. 479; *Farrar v. Chauffetete*, 5 Denio (N. Y.) 527.

ceptions have been engrafted upon the rule for the benefit of trade and manufacture, from time to time, and these have been most usually in favor of tenants as against their landlords. Annexation in some form is necessary to constitute that a part of the land which is ordinarily personal property. The annexation in some cases is by gravitation alone, but then the thing so annexed is, in most cases, either a part of some machine, the principal part of which is actually annexed to some building, fastened or let into the soil, or is necessary to complete a building, or to the occupation of the land for the purposes of the trade to which it is adapted and has been appropriated. With a few special exceptions, such as locks, keys, bars, movable shutters, blinds, etc., which are all necessary to complete the building to which they are fitted; charters, deeds, etc., and the box or chest in which they are contained; fish in a fish pond; rabbits, etc., in a warren; deer in a park, etc., which all go with the inheritance as heir looms, and which are considered as annexed and necessary to the enjoyment of an inheritance; chattels in order to lose their characteristics as personal property, must at least be so far fixtures that they are permanent in one place.

“The very idea of a fixture is of a thing fixed or attached to something as a permanent appendage, and implies firmness in position. But that which becomes by annexation a part of the soil is something more than a fixture, and requires at least as much permanence as to constitute a fixture. The maxim, *Quicquid plantatur solo, solo credit*, which tersely expresses the principle, makes the affixing of the chattel to the soil the test by which it is declared to belong to the soil. Hence, courts, in determining the questions that have arisen, have looked at the mode and intention of annexation, the object and customary use of the thing annexed, and in determining the intention the character of the claimant has had its weight. But fitness and adaptation and intention to annex, without actual or constructive annexation, do not make a chattel a part of the realty. A man may have the rafters, doors, and windows made to fit precisely his house and the positions they are respectively to occupy, and brought to the ground; but until actually put and affixed in and to the house, and thus made a part of it and the land upon which it stands, they remain personal property. When once attached, they may be removed for temporary purposes without destroying their character as a part of the realty. It would be a vain work for me to undertake that which more able judges have avowed an inability to do, to wit, to review all the cases in which the question has arisen under greatly differing circumstances, and in almost every variety of form, and reconcile the apparent conflict of decisions, and deduce from all a certain rule, easy of application, and to which every case may be made to conform.

“It is suggested that the articles claimed under the mortgage passed as incident to and accessory to the principal thing granted, and as a part of the means to obtain it and all the fruits and effect of it. It is well settled that where anything is granted, all the means to enjoy it and

the incidents and accessories pass with it. As by a grant of ground, a grant of way to it; by a grant of trees, the power to cut them; by a grant of mills, the waters, flood gates, and the like, that are of necessary use to the mill. (1 *Shep. Touch.* 89, 90; *House v. House*, 10 Paige 158; *Babcock v. The Western Rail Road Co.*, 9 Met. 553.) But divers things, that, by continued enjoyment with other things, are only appendant to others, as warrants, leets, waifs, estrays, and the like, will not pass by the grant of those other things. (1 *Shep. Touch.* 89; *Archer v. Brumul*, 1 Lev. 131.) If the thing claimed is a means of enjoyment of the thing granted, as a right of way or other easement over the other lands of the grantor, the only question is whether the right claimed is necessary. If it is claimed as a part of the thing granted, because necessary to the usual and profitable employment of the thing granted, and adapted to its use, the question is whether it is affixed and made a substantial part of the freehold, or is a mere annexation for the purpose of trade or manufacture, as in the latter case it would not be included in the grant. (*Murdock v. Gifford*, 18 N. Y. Rep. 28.) Actual physical annexation is not claimed here as to most of the property in controversy, but a constructive annexation resulting from the fitness and necessity of the articles, to the right use of the main thing. The examples given of constructive annexation, which alone will supply the want of actual annexation, are the stone of a mill taken out to pick it; keys, locks, doors, etc., sails of a wind mill, windows, etc. (*Grady's Law of Fixtures*, 15.) These examples take the place of a definition, in terms, of a constructive annexation, and the chattels which become realty by constructive annexation must belong to the same class or come within the reasons which control in such cases.

“They must be such as go to complete the building or machinery which is affixed to the land, and which, if removed, would leave the principal thing incomplete and unfit for use. In order to pass as an accessory of that which is confessedly realty, it would be accessory to it, and not to a matter of a personal nature. A fire engine was considered as an accessory to the carrying on of the trade of getting and vending coals from the land, a matter of a personal nature, and therefore is not a part of the realty. (*Lawton v. Lawton*, 3 Atk. 13; *Lord Derby v. Lord Ward*, 1 Amb. 13.) The carrying of passengers and freight is a matter of a personal nature, to which, and not to the railroad as realty, the ‘locomotives, cars, etc., are accessory.’

“C. J. Shaw, in *Winslow v. Merchants' Ins. Company*, 4 Met. 314, after speaking of the difficulty of laying a general rule, says, ‘In general terms, we think it may be said that where a building is erected, as a mill, and the water works or steam works which are relied upon to move the mill are erected at the same time, and the works to be driven by it are essential parts of the mill, adapted to be used in it and with it, though not at the time of the conveyance, attachment, or mortgage attached to the mill, are yet parts of it, and pass with it by a con-

veyance, mortgage or attachment.' In the same case it was decided that all articles of stock, such as iron and coal, and all materials to be wrought, and the hand tools and all implements not driven by the steam engine, and articles not annexed to the building nor embedded in the ground, nor constituting parts of such mill, were to be deemed personalty, and not realty. This is, I think, the extent of the rule of constructive annexation. Broom, in his *Legal Maxims*, page 190, says, 'It is not sufficient that the article in question merely rests upon the soil, or upon such foundation; unless there be annexation, no difficulty can under any circumstances occur.' Lord Mansfield held that salt pans put in salt works by the ancestor went to the heir as part of the inheritance, and not to the executor. He put the decision upon the ground that the owner erected them for the benefit of the inheritance, and could never have intended to give them to the executor. These salt pans were fixed with mortar to a brick floor, and there were furnaces under them. (*Lawton v. Salmon*, 1 H. Black. 259 in notes.) This has been called a mixed case of an erection, for the benefit of trade, as well as of the inheritance, and effect was sought to be given to the intent of the owner.

"The cases of *Farrar v. Stackpole*, 6 Greenl. 157; *Voorhees v. Freeman*, 2 W. & S. 116; and *Pyle v. Pennock*, Id. 300, so far as they dispense with annexation of chattels to the soil or building, as an essential requisite to change the character of a personal chattel, and make such change to depend upon the fitness and adaptation of the article to the purposes for which the real estate is used, are opposed by the decision of our own courts. Perhaps they may be reconciled to our decisions, but not upon any principle which could affect this case. The American editor of *Smith's Leading Cases* is of the opinion that the doctrine of the Pennsylvania court must prevail, if at all, by its own authority, since in all the cases in which chattels have been elsewhere treated as fixtures there has been some annexation, although in some instances slight in its character, to the premises on which they were placed. (2 *Smith's Lead. Cases*, Law Lib. ed., 169, top paging.) The cases of water wheels, mill stones, running gear, and bolting apparatus of a grist and flouring mill, which in *House v. House*, *supra*, were held to be constituent parts of the mill, are not an exception to the rule of requiring some annexation. The frame work and foundation upon which the water wheel rests, and upon which it turns upon its axle, is necessarily a part of a building, or embedded in the soil, and that and the wheel are made for each other, and both are parts of the completed building and essential to it, and all the gearing connected with it form a part of the same machinery. It all has a permanent and fixed position. It is stationary, not movable, in one place today and another tomorrow."

If the article when attached becomes a part of the realty its temporary removal has been held not to be sufficient to change its character from realty to personalty (see *Beardsley v. On-*

tario Bank, *supra*), for the article although temporarily detached is said to still have a constructive annexation. In New York this doctrine has been extended so as to apply to hop poles removed from realty with the intention of again affixing them to the freehold the following season. [*Bishop v. Bishop*, 11 N. Y. 123; *Sullivan v. Toole*, 26 Hun. (N. Y.) 203.]

In the absence of evidence establishing the intent of the annexor to make them a permanent accession to the freehold, articles of machinery used in a manufactory, only attached to the building to keep them steady and in their places so that their use as chattels may be more beneficial, and removable without material injury to the freehold or to the articles themselves, retain their character as personal property notwithstanding such annexation.¹ In the case of *Farrar v. Chauffetete*, *supra*, the court said :

“All the circumstances make a different case from that of a mill erected for the purpose of placing machinery in it with a driving wheel, making a part of the building and a dam to raise a head of water for motive power; so different that I can suppose they would vary the principle of the rule as between vendor and vendee, and that it might happen that what would be properly held fixtures in the one case might under the same circumstances of attachment be held personal property in the other. As an illustration, a threshing machine attached to the timbers of a barn by bolts and nuts or cleats, and moved by a horse power, and capable of being taken away without injury to the building, I think would not pass by a deed of the farm on which the barn stood. If, however, the machine was attached in precisely the same manner, but operated by a water-wheel, fixed to the building, and moved by hydraulic power, conducted for the purpose of the building, the machine might pass by a deed of the farm. So if a tobaccoist should place in a store already erected a steam engine and machinery, the former on timbers embedded in the ground, and the latter fastened to the building by bolts and cleats, I think the engine and machinery would hardly pass by a deed of the

¹ *Swift v. Thompson*, 9 Conn. 63; *Gaylor v. Harding*, 37 Conn. 508; *McKim v. Mason*, 3 Md. Ch. Dec. 186; *Graves v. Pierce*, 53 Mo. 423; *Tobias v. Francois*, 3 Vt. 425; *Sturges v. Warren*, 11 Vt. 433; *Vanderpool v. Van Allen*, 10 Barb. (N. Y.) 157; *Cresson v. Stout*, 17 John. (N. Y.) 116; *Murdock v. Gifford*, 18 N. Y. 28; *Farrar v. Chauffetete*, 5 Denio (N. Y.) 527; *Cosgrove v. Troesch*, 62 A. D. (N. Y.) 123; *N. Y. Life Ins. Co. v. Allison*, 107 Fed. 179; *Walker v. Sherman*, 20 Wend. (N. Y.) 636.

freehold. But if the building were originally erected for the purpose of placing in it the engine and machinery, and afterwards the building enlarged for the purpose of storing the manufactured article, the whole would probably pass by a deed of the soil."

In the case of *Cosgrove v. Troescher, supra*, the court made the following statement:

"It is quite likely that the refrigerators and gas logs were also movables as matter of law, but the evidence is not sufficiently definite or satisfactory to enable us to declare. It does not appear whether the alcoves in which the refrigerators were placed were finished off to correspond with the rest of the room, or whether the refrigerators were purchased in the market or specially constructed to fit these alcoves. It does not appear that the trimmings and furnishings of the refrigerators corresponded with the rooms in which they were located. The evidence does not show whether the awnings had been specially constructed for the windows of these apartments or whether they had been used. The same is true of the drying frames."

Some confusion has resulted in an attempt to reconcile the class of cases last cited with other cases holding the articles attached to be real estate although the annexation would appear in some of such cases to be equally slight. The distinction between these two classes of cases probably lies in the fact that in the former class of cases the intent to make the attached article a permanent accession to the freehold was not established while in the latter class of cases there was evidence establishing such intent. Where such intent clearly exists it has been held that slight affixing to the realty will make the articles affixed a part of the realty. This distinction is well illustrated in the case of *Farrar v. Chauffetete*, quoted above. In this same connection the court said:

"These illustrations are used to show that each case must in some degree depend upon its own circumstances: that the principles applicable as between vendor and purchaser must vary with the varying circumstances of each case. The question of intention enters into and makes an element of each case. The circumstances are to be taken into account to show whether the erections were made for the permanent improvement of the freehold, or for the temporary purposes of trade."

APPROPRIATION TO USE OF REALTY

If the article is actually annexed to the realty and there is evidence establishing intention to make it a permanent acces-

sion to the freehold, appropriation to the use or purpose of that part of the realty with which it is connected is usually inferred or presumed. But in case there is annexation only, the question of special appropriation becomes important as bearing upon the intent of the annexor in making the annexation.¹ The cases last cited establish the proposition that where the thing attached is equally suitable for use in connection with real estate generally, appropriation to the use or purpose of the particular real estate to which it happens to be attached is not established. Thus machinery attached to a particular mill or factory but suitable for use in any other similar mill or factory has been held personal property, the lack of special adaptability being evidence that the annexor did not intend to make such machinery a permanent annexation to the freehold.² In the case of *New York Ins. Co. v. Allison*, the court said:

“Unless the annexation is of a machine or chattel especially adapted for use in the particular place where it has been put, the purpose of the annexation and the intention with which it has been made are the most important considerations, and are the determining criterion.” (See also quotation from *Cosgrove v. Troescher* on page 228 hereof.)

In the case of *Voorhees v. McGinnis*, 48 N. Y. 278, 286, we find the following statement:

“It is further found that the planing machine, fire pump, saw benches and saws were worked by bands and other modes of transmitting motion from the engine, through the gearing and shafting above mentioned, and were complete in themselves as machines, as were also the copper pipes for steaming hubs, and were of equal use and value wherever they were wanted, and were affixed to the building only for convenience in

¹ *Oliver v. Lansing*, 59 Nebr. 219; *Penn. Mut. Life Ins. Co. v. Semple*, 38 N. J. Eq. 575; *Blanche v. Rogers*, 26 N. J. Eq. 563; *Fitzgerald v. Atlanta Home Ins. Co.*, 61 A. D. (N. Y.) 350; *New York Ins. Co. v. Allison*, 107 Fed. 179; *Bender v. King*, 111 Fed. 60; *Murray v. Bender*, 125 Fed. 705; *Hudson Trust Etc. v. Carr-Curran Paper Mills Co.*, 58 N. J. Eq. 59; *Temple Co. v. Penn. Mut. Life Ins. Co.*, 69 N. J. L. 36; *Fish Co. v. Young*, 127 Wis. 149; *Crane Iron Works v. Wilkes*, 64 N. J. L. 193; *Newfelder v. Third St. & S. Ry.*, 23 Wash. 470.

² *New York Ins. Co. v. Allison*, 107 Fed. 179; *Hudson Trust & Savings Inst. v. Carr-Curran Paper Mills Co.*, 58 N. J. Eq. 59; *Crane Iron Works v. Wilkes*, 64 N. J. L. 193; *Newfelder v. Third St. & S. Ry.*, 23 Wash. 470.

using, and were capable of removal without injury to the building or to themselves.

“There is greater doubt whether these articles come within the rule which would make them fixtures. They are less permanent in their character; the actual annexation is much slighter, and their use evinces less evidence of an intended accession to the freehold. They may well be held to be chattels and to pass under the chattel mortgages.”

In the case of *Berliner v. Piqua Club Ass'n*, 32 Misc. (N. Y.) 470, 472, Justice Russell said:

“The courts have advanced in the last half century from the inspection as to how firmly articles have been attached to the realty, in the ascertainment as to whether they pass with it by conveyances, to the more important consideration of union in usefulness for the structure and permanence of association.”

It has been stated that the application of this test (appropriation or adaptability) of the character and use of the article is most frequently called for in connection with machinery or apparatus in a building, and the cases suggest the idea that when a building is erected for, or permanently devoted to, a particular purpose, anything annexed to the building for the carrying out of that purpose may be considered as accessory to the realty itself, while articles annexed merely for the purpose for which the building happens at the time to be used are not to be so regarded. (See 13 *Am. and Eng. Enc. of Law*, 2nd ed., 613.) In the case of *Roddy v. Brick*, 42 N. J. Eq. 225, Justice Bird said:

“It would seem that when a building is erected for a particular purpose, and machinery is placed therein to effectuate that purpose, and is reasonably necessary therefor, and is in some substantial manner attached to the land or the building, and consequently to the freehold, so as to give one the idea of permanency and to evince an intention of making a fixture of it, the courts incline to regard such machinery as part of the realty, irrespective of weight or size, unless the size be such that the machine cannot be removed without removing or damaging the building.”

In the case of *Fortman v. Goepper*, 14 Ohio St. 558, the court used this language:

“The general principle to be kept in view, underlying all questions of this kind, is the distinction between the business which is carried on in

or upon the premises, and the premises, or *locus in quo*. The former is personal in its nature, and articles that are merely accessory to the business, and have been put on the premises for this purpose, and not as accessions to the real estate, retain the personal character of the principal to which they appropriately belong and are subservient. But articles which have been annexed to the premises as accessory to it, and not peculiarly for the benefit of a present business, which may be of temporary duration, become subservient to the realty and acquire and retain its legal character."

In *Rogers v. Brohan*, 25 N. J. Eq. 496, the vice-chancellor said:

"Movable machines, like these, whose number and permanency are contingent on the varying circumstances of the business, subject to its fluctuating conditions, and liable to be taken in or out as exigencies may require, are different in nature and legal character from the steam engine, boilers, shafting, and other articles secured by masonry or other substantial annexation, designed to be permanent, and indispensable to the enjoyment of the freehold."

It would seem that in order to make machinery attached to a building a part of the realty because of appropriation or adaptability the building must have been erected for a special purpose and the machinery placed therein to effectuate that special purpose; or, to put the matter another way, the machinery in order to become realty must be reasonably necessary or accessory to the use of the building whatever business may be carried on therein. On the other hand, machinery which can be used in one place as well as another, and which adds nothing to the building itself, though it may be of advantage to the business (*Chase v. Tacoma Box Co.*, 11 Wash. 377) and which as to "permanency is contingent on the varying circumstances of the business, subject to its fluctuating conditions, and liable to be taken in or out as exigencies may require" does not constitute realty because of appropriation or adaptability.

In a large manufacturing establishment, consisting of several buildings, the number and permanency of such machines as were usable in one building as well as in another would certainly depend upon "the varying circumstances of the business, subject to its fluctuating conditions, and liable to be

taken in or out as exigencies may require". Such machines in such establishments would certainly be classified as personal property under the rule laid down in the foregoing cases so far as appropriation or adaptability was concerned. It has accordingly been held in the case of a building erected for the sole purpose of a twine factory and equipped with special machinery attached thereto to be used exclusively for the manufacture of twine, that the machinery so attached and so used constituted real estate. See *McRea v. Central National Bank of Troy*, 66 N. Y. 489. See also *National Starch Company v. Waldron*, 26 A. D. (N. Y.) 527.

INTENTION OF ANNEXOR TO MAKE ARTICLE PERMANENT ACCESSION TO FREEHOLD

This question of intent upon the part of the annexor is said to be a mixed question of law and fact, the fact being determined by the jury upon proper instructions by the court.¹ In the case of *Cosgrove v. Troescher*, 62 A. D. (N. Y.) 121, 126, the court said:

"The determination of the question may depend upon the intention of the owner, to be ascertained not from his testimony as to what he intended nor from any undisclosed purpose or intent which he may have had, but from his acts and conduct, and all the surrounding facts and circumstances."

In the case of *McRea v. Troy Cent. National Bank of Troy*, 66 N. Y. 489, 496, the court said:

"The mode of annexation may, it is true, in the absence of other proof of intent, be controlling. It may be in itself so inseparable and permanent as to render the article necessarily a part of the realty, and in case of less thorough annexation the mode of attachment may afford convincing evidence that the intention was that the attachment should be permanent; as for instance where the building is constructed expressly to receive the machine or other articles, and it could not be removed without material injury to the building or where the article would be of no value except for use in that particular building, or could not be removed therefrom without being destroyed or greatly damaged. These are tests which have been frequently applied in determining whether the annexation was intended to be temporary or permanent, but they are not the

¹ *Scovell v. Block*, 31 N. Y. S. 975; *Hopewell Mills v. Taunton Savings Bank*, 23 N. E. (Mass.) 327.

only ones, nor is it indispensable that any of these conditions should exist."

It has been generally held that intention does not mean the undisclosed purpose, but the purpose as manifested by acts and the sound inferences therefrom.¹ In the case of *Jermyn v. Hunter*, 93 A. D. (N. Y.) 175, 177, it was stated:

"In the absence of any expression of intention . . . it follows as a legal conclusion from the character of the property, the place provided for its installation, and the necessity of the use of the same in connection with the occupation of the building, that the appurtenance was intended to and became a permanent part of the realty as much as the windows, doors, and mantels."

In the case of *Teaff v. Hewitt*, 1 Ohio St. 512, it was held that:

"The machinery and implements in a manufacturing establishment, although useful and even essential to the business carried on, which are not permanently affixed to the ground or the structure of the building, and which can easily be removed without material injury to the building or articles themselves, and their place supplied by other articles of a similar kind, are not fixtures, but personal property. But that portion of the machinery in such an establishment which is firmly fixed to the earth or the structure of the building and which from its nature, mode of attachment, use, and the relative situation of the party placing it there, was plainly intended to be permanent, is parcel of the freehold."

It was held in that case that the carding machinery of a woolen factory, attached to the building by cleats to confine them to their proper place, and subject to removal whenever convenience or business required, were not fixtures but chattels; while the steam engine and boiler used to supply the motive power, permanently fixed upon a foundation laid in the earth, were regarded as realty. This case has been cited as authority in recent Ohio cases (see *Case Manufacturing Co. v. Garver*, 13 N. E. 493), and undoubtedly represents the law in Ohio today. The principle cited in this case seems to distinguish between the power and generating apparatus in a factory and the machinery propelled or operated by such ap-

¹ *Snedeker v. Warring*, 12 N. Y. 170; *Hopewell Mills v. Taunton Savings Bank*, 150 Mass. 519.

paratus, the former being considered realty and the latter personalty. It would seem that when the owner of a building intended for manufacturing purposes places therein power-generating apparatus that his reasonable intent might be presumed to be to make such generating apparatus a permanent accession to the freehold, because whatever manufacturing might be subsequently carried on the power generating apparatus would be required in order that the real estate might be subservient to the use for which it was intended. The principle upon which the Ohio doctrine is established is well stated in the case of *Case Manufacturing Company v. Garver, supra*, in the following manner:

“The machinery furnishing the motive power is generally more closely annexed to the freehold, and of a more permanent nature, as the power furnished by it may be adapted to the propulsion of the machinery of a variety of mills without any substantial change in the motive power itself, or in the building, other than by substituting one kind of machinery for another; while the machinery that is propelled has more of the general character of personalty, is not as a rule so closely annexed to the freehold, and may be removed, and frequently is, from one mill to another, as any other article of personalty. Hence it has generally been held in this country that articles of machinery used in a factory for manufacturing purposes, only attached to the building to keep them steady in their places, so that they may be more serviceable when in use, and that may be removed without any essential injury to the freehold or the articles themselves, are personal property, and do not pass by a conveyance or mortgage of the freehold. *Ewell, Fixt.*, 294. On the other hand, steam engines and boilers, with their appliances, that supply the motive power of machinery, and, for purpose of use, are usually stably attached to the realty, pass by a conveyance or mortgage of the land. 1 *Schouler, Per. Prop.*, 155; *Ewell, Fixt.*, 290; 1 *Washb., Real Prop.*, 8.”

In the case of *Hopewell Mills v. Taunton Savings Bank*, 23 N. E. (Mass.) 327, it was held that machinery for the manufacturing of cotton cloth placed in a cotton mill erected for the special purpose of manufacturing cotton became a part of the realty upon the ground that, as both building and machinery were connected for a special purpose, the intent of the annexor must have been to make such machinery a permanent accession to the freehold. In the opinion Judge Knowlton said:

“Except in cases where a contract determines the question, a machine placed in a building is found to be real estate or personal property from the external indications which show whether or not it belongs to the building as an article designed to become a part of it, and to be used with it to promote the object for which it was erected, or to which it has been adapted and devoted, an article intended not to be taken out or used elsewhere, unless by reason of some unexpected change in the use of the building itself. The tendency of the modern cases is to make this a question of what was the intention with which the machine was put in place. *Bank v. Machine Works*, 127 Mass. 545; *Turner v. Wentworth*, 119 Mass. 459; *Allen v. Mooney*, 130 Mass. 155; *Paper Co. v. Servin*, Id. 513; *Hubbell v. Bank*, 132 Mass. 447; *Maguire v. Park*, 140 Mass. 21, 1 N. E. Rep. 750; *McEea v. Bank*, 66 N. Y. 490; *Hill v. Bank*, 97 U. S. 450; *Mill Co. v. Hawley*, 44 Iowa, 57. These cases seem to recognize the true principle on which the decisions should rest, only it should be noted that the intention to be sought is not the undisclosed purpose of the actor, but the intention implied and manifested by his act. It is an intention which settles, not merely his own rights, but the rights of others, who have or who may acquire interests in the property. They cannot know his secret purpose; and their rights depend, not upon that, but upon the inferences to be drawn from what is external and visible.

“In cases of this kind, every fact and circumstance should be considered which tends to show what intention, in reference to the relation of the machine to the real estate, is properly imputable to him who put it in position. Whether such an article belongs to the real estate is primarily and usually a question of mixed law and fact. *Allen v. Mooney*, 130 Mass. 155; *Turner v. Wentworth*, 119 Mass. 459; *Maguire v. Park*, 140 Mass. 21, 1 N. E. Rep. 750; *Carpenter v. Walker*, 140 Mass. 416, 5 N. E. Rep. 160; *Bank v. Mason*, 147 Mass. 500, 18 N. E. Rep. 406. But the principal facts, when stated, are often such as will permit no other presumption than one of law. It is obvious that in most cases there is no single criterion by which we can decide the question. The nature of the article, and the object, the effect and the mode of its annexation, are all to be considered. In this commonwealth it has been said that ‘whatever is placed in a building subject to a mortgage by a mortgagor or those claiming under him, to carry out the purpose for which it was erected, and permanently to increase its value for occupation or use, although it may be removed without injury to itself or the building, becomes part of the realty.’ *Pierce v. George*, 108 Mass. 78; *Bank v. Mason*, *ubi supra*. This rule generally prevails in other jurisdictions. *Parson v. Copeland*, 38 Me. 537; *Holland v. Hodgson*, L. R. 7 C. P. 328; *Longbottom v. Berry*, L. R. 5 Q. B. 123; *McEea v. Bank*, 66 N. Y. 490; *Hill v. Bank*, 97 U. S. 450; *Harlan v. Harlan*, 15 Pa. St. 507; *Railroad Co. v. Iron Co.*, 36 N. J. Eq. 452; *Roddy v. Brick*, 42 N. J. Eq. 225, 6 Atl. Rep. 806; *Mill Co. v. Hawley*, 44 Iowa, 57.

“We are of opinion that it is applicable to the case at bar. The build-

ing mortgaged was a cotton mill; and the machinery in controversy was all procured for use in manufacturing cotton cloth. Most of it was heavy; and there is much to indicate that, while there were changes in the kinds of goods manufactured, the machines were not of a kind intended to be moved from place to place, but to be put in position, and there used with the building, until they should be worn out, or until, for some unforeseen cause, the real estate should be changed, and put to a different use. Of most of them, it is said in the agreed statement that they were fastened to the floor for the purpose of steadying them when in use; but it is also said that this is not a statement of the only purpose for which they were fastened. They seem to have been attached to the building, and connected with the motive power, with a view to permanence."

It has been stated that the intention of the annexor is inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of the annexation and the purpose or use for which the annexation has been made.¹ It has been held in New York that a portable gristmill moved into a building formerly used as a tannery, connected with the motor power and machinery therein, fastened in a secure and a permanent manner to the building for the purpose of permanently using it as a custom gristmill, becomes a part of the realty as between vendor and vendee. This mill was fastened to the building by placing two sticks of timber parallel with each other upon the floor as far apart from each other as the width of the mill frame and extending from one side of the room to the other. Then the mill in its frame was set upon these cross timbers and iron rods or bolts provided with screws, nuts, and washers were run down through the frame timbers, the cross sticks, the floor joists, and other corresponding cross sticks under the floor joists supported by upright posts resting on the cellar bottom or set in the ground. The referee found as a fact that when the mill was put in by the judgment debtor he designed it as a permanent structure for use as a custom and gristmill for that neighborhood. (*Potter v. Cromwell*, 40 N. Y. 287.) This case has been sometimes cited in New York as authority for holding that machinery so attached became a part of the realty. It is probable, however, that if the referee had not found that

¹ *Teaff v. Hewitt*, 1 Ohio St. 511; *Hopewell Mills v. Taunton Savings Bank*, 150 Mass. 519; *Jermyn v. Hunter*, 93 A. D. (N. Y.) 175.

the annexor intended to make the mill a permanent accession to the freehold the case would have been otherwise decided. For example, if it had appeared in this case that the mill was used in this building and also in other buildings it probably would not have been held to have been real estate.

On the other hand, it has been held in New York that looms in a woolen factory placed on the floors in the factory and fastened to the floor by means of screws in each loom for the purpose of keeping the looms in their places and steady during the operation did not become real estate but remained personal property. (*Murdock v. Gifford*, 18 N. Y. 28.) In this case the court said:

“Applying this principle (application of the rule of fixtures), to the case of a factory, the wheel or engine which furnished the motor power, and all that part of the gearing and the machinery which has special relation to the building with which it is connected, would belong to the freehold; while an independent machine like a loom which, if removed, still remains a loom, and can be used as such wherever it is wanted and power can be applied to it, will still retain its character personalty.”

The law in New York seems to have been adequately and concisely summed up in the case of the *New York Life Insurance Co. v. Allison*, 107 Fed. 179, in the following language:

“The decisions of the New York courts are in harmony with the general trend of the adjudications elsewhere, and are to the effect that the machine does not become a fixture by merely attaching it to the building, without the intention to make it a permanent accession, when it is not so incorporated with the building as to lose its identity, or render it difficult or injurious to the building to remove it, or when it is not essential to the use to which the part of the building in which it is connected is appropriated. (*Murdock v. Gifford*, 18 N. Y. 28; *Potter v. Cromwell*, 40 N. Y. 287.) The annexation is treated as of a permanent nature when the building is to be devoted to the purposes for which the machinery is to be used, and is not complete in the absence of the machinery.”

There is no conflict in the decisions that the intention of the annexor is an important feature in determining whether or not the fixture has retained its character as personal property or has become part of the realty to which it is annexed. Where there is conflict in the decisions it arises as to what evidence is necessary to establish such intent and the proper

application of the facts to the particular case in mind. It is sometimes said "that the intent of the party annexing an article to the freehold is the most important criterion of its character as a fixture, and other circumstances or facts are valuable chiefly as evidence of such intention." (*Cyc. of Law and Procedure*, vol. 19, page 1046, and cases there cited.) Upon the general proposition of the importance of such intent see the following cases:

- Voorhees v. McGinnis*, 48 N. Y. 278
Bishop v. Bishop, 11 N. Y. 123
Snedeker v. Warring, 12 N. Y. 170
Potter v. Cromwell, 40 N. Y. 278
McRea v. Central Nat. Bank of Troy, 66 N. Y. 489
National Starch Co. v. Waldron, 26 A. D. (N. Y.) 527
McMillan v. Leaman, 101 A. D. (N. Y.) 436
Wells v. Maples, 15 Hun (N. Y.) 90
Borland v. Hahn, 25 N. Y. S. 131
Scobell v. Block, 31 N. Y. S. 975.
Matter of Mayor, 37 A. D. (N. Y.) 589
13 *American and English Cyc. of Law*, 2nd edition, 613
McConnell v. Blood, 123 Mass. 47
Southbridge Savings Bank v. Exeter Mach. Works, 127 Mass. 542
Roddy v. Brick, 42 N. J. Eq. 225
Fortman v. Goepfer, 14 Ohio St. 558
Wager v. Cleveland & R. R. Co., 22 Ohio St. 563
General Electric Co. v. Transit Equipment Co., 42 Atl. Rep. (N. J.) 101
Fisfield v. Farmers Nat. Bank, 148 Ill. 163
Hawkins v. Hersey, 86 Me. 396
Chase v. Tacoma Box Co., 11 Wash. 377
Rodgers v. Brokaw, 25 N. J. Eq. 496
Pope v. Jackson, 65 Me. 162
Pfuger v. Carmichael, 54 A. D. (N. Y.) 153
Wolford v. Baxter, 33 Minn. 12
Fullam v. Stearns, 30 Vt. 443
Hill v. Wentworth, 28 Vt. 428
Ewell on Fixtures, 28
New York Life Insurance Co. v. Allison, 107 Fed. 179
Bender v. King, 111 Fed. 60
Andrews v. Chandler, 27 Ill. App. 103
Moody v. Aiken, 50 Tex. 65
Swift v. Thompson, 9 Conn. 63
Gaylor v. Harding, 37 Conn. 508
Wade v. Johnston, 25 Geo. 331
Gunderson v. Kennedy, 104 Ill. App. 117

Readfield Tel. Co. v. Cyr, 95 Me. 287

Robertson v. Corsett, 39 Mich. 777

Ferris v. Quimby, 41 Mich. 202

Morrison v. Berry, 42 Mich. 389

Aldine Mfg. Co. v. Barnard, 84 Mich. 632

Lansing Iron and Engine Works v. Wilbur, 111 Mich. 413

Hudson Trust & Savings Inst. v. Carr-Curran Paper Mills, 58 N. J. Eq. 59

Temple Co. v. Penn Mut. Life Ins. Co., 69 N. J. L. 36

E. M. Fish Co. v. Young, 127 Wis. 149

Crane Iron Works v. Wilkes, 64 N. J. L. 193

Neufelder v. Third St. & S. Ry., 23 Wash. 470

Carpenter v. Allen, 150 Mass. 281

AGREEMENT BETWEEN OWNER OF REALTY AND OWNER OF PERSONALTY ATTACHED

It has been generally held that by agreement between the owner of the realty and the owner of the personalty the articles attached retain their character as personal property even though they would have become realty when attached in the absence of such agreement, as where it is provided that the title to the personal property attached shall not pass to the owner of the realty until the purchase price is paid or where a chattel mortgage is given covering such personal property. The principle above enunciated only covers cases where such an agreement exists. It is, therefore, a well-established rule of law that the character of fixtures may be changed from real estate to personalty by agreement.¹

LANDLORD AND TENANT

The principles of law heretofore enunciated concerning fixtures applied, as before stated, between (a) vendor and vendee; (b) grantor and grantee; (c) mortgagor and mortgagee; (d) heir and personal representative of deceased. The foregoing rules or principles established do not apply between landlord and tenant as the law of fixtures between landlord

¹ *Walder v. English*, 137 A. D. (N. Y.) 43; *Jermyn v. Hunter*, 93 A. D. (N. Y.) 175; 19 Cyc., 1048; *N. Y. Inv. Imp. Co. v. Cosgrove*, 167 N. Y. 601; *Sisson v. Hibbard*, 10 Hun (N. Y.) 420; *Trowbridge v. Hayes*, 45 N. Y. S. 635; *Ford v. Cobb*, 20 N. Y. 344; *Tyson v. Post*, 108 N. Y. 217; *Andrews v. Day B. Co.*, 132 N. Y. 348; *Tift v. Thornton*, 53 N. Y. 377; *Kirbbs v. Alford*, 120 N. Y. 519; *Carpenter v. Allen*, 150 Mass. 281.

and tenant is more favorable to the tenant than it is to vendee, grantee, mortgagee, or personal representative of deceased. The rule between landlord and tenant as now understood is that, upon principles of general policy, a tenant whether for life, for years, or at will, is permitted to carry away all such fixtures of a chattel nature as he had himself erected upon the demised premises for the purposes of ornament, domestic convenience, or to carry on trade, provided the removal can be effected without material injury to the freehold, or to the fixtures themselves.¹

It has been stated as a general proposition that in regard to landlord and tenant, the tenant may remove any fixture erected by him for the purpose of trade or manufacture which can be removed without injury to the fixture or the freehold, provided the removal is made prior to the termination of the lease, where the term is definite, and within a reasonable time after the expiration of the term in case the term is indefinite. If, on the other hand, the fixture cannot be removed without material injury either to the fixture or the freehold, the tenant cannot remove the fixture but it becomes and remains a part of the realty. (*Collamore v. Gillis, supra.*)

It has been said that fixtures which a tenant is allowed to disannex and take away are comprehended within two classes or are of a mixed nature, falling partly within and partaking of the nature of both. These classes are: first, those which are put up for ornament or the more convenient use of the premises and are called domestic fixtures; second, those which are put up for the purposes of trade and are known as trade fixtures. (*Wall v. Hinds, supra.*) The reason for the rule as to fixtures between landlord and tenant is that the law regards with peculiar favor the rights of tenants to remove articles annexed by them to the freehold, and extends much greater indulgence to them in this respect than it concedes to any other class of persons.²

¹ *Wall v. Hinds*, 4 Gray (Mass.) 270; *Allen v. Mayfield*, 127 Pac. (Cal.) 44; *Collamore v. Gillis*, 149 Mass. 578, 5 L. R. A. 150; *Cooper v. Johnson*, 143 Mass. 108; *Matter of the City of New York*, 118 A. D. (N. Y.) 856.

² *Taylor v. Townsend*, 8 Mass. 411; *Whiting v. Brastow*, 21 Mass. 310; *Gaffield v. Hapgood*, 34 Mass. 192; *Müller v. Baker*, 42 Mass. 27; *Winslow v. Merchants Insurance Co.*, 45 Mass. 306; *Wall v. Hinds*, 4 Gray (Mass.) 270; *King v. Johnson*, 73 Mass. 239.

In the case of *Massachusetts National Bank v. Shtnn*, 18 A. D. (N. Y.) 279, the court said :

“As between landlord and tenant, the placing of machinery or other appliances by the tenant upon the leased premises, for the purpose of trade or manufacture to be carried on by the tenant, does not make the property so affixed a part of the freehold, but it still remains personalty, to such an extent at least that the tenant retains the right to remove it.”

In the case of *Matter of the City of New York*, 118 A. D. (N. Y.) 865, it was stated :

“As between landlord and tenant the tenant is allowed to remove fixtures annexed to the freehold; but it is only as between landlord and tenant that the rule of the common law that anything that was annexed to the freehold by a substantial connection becomes a part of the realty has been relaxed.”

DECISIONS UNDER THE TAX LAW

Some confusion has resulted in certain cases which have been decided under the tax law in regard to whether certain articles of machinery or fixtures were to be taxed as real estate or personal property. We have seen that the legislature has the power to make personal property real estate or real estate personal property for the purposes of taxation. Therefore, if certain machinery or other fixtures are taxable as real estate under the definition of that term in the tax law the decisions declaring such machinery taxable as real estate because of such definition have no relation whatever to the common law rule of fixtures and should not be cited as authority in determining whether certain articles of property are to be classified as realty or personalty under the common law rule of fixtures. In the tax law in the state of New York the terms “land”, “realty”, and “real property” are defined to “include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures erected upon, under or above or affixed to the same”. Under this definition certain decisions have been made holding articles of machinery to be real estate.¹

¹ *New York Edison Co. v. Wells*, 135 A. D. (N. Y.) 644; *People ex rel. Manhattan Ry. Co. v. Wells*, 122 A. D. 921, affirmed 192 N. Y. 566;

In the case of *People ex rel. National Starch Co. v. Waldron, supra*, it was held that machinery consisting in part of machines standing on brick or wooden foundation, fastened with bolts, in part of machines slightly fastened with screws, and in part of shafting, all capable of being removed without material injury to the buildings in which they were, which had been placed in the building by its owner, a manufacturing company, for the purpose of conducting a manufacturing business, to which the machinery was essential, and which had been purchased together with the premises by a corporation which conducted a similar business thereon, must be deemed to have been permanently annexed to the land for the purpose of the business, and as such was taxable as "land" within the meaning of that term as defined in the tax law. In this case the court said: "The corporation being the owner of the entire property, I think that the rule to be applied to the people is to be decided upon principles no less rigid than those which would be applied to a question of fixtures arising between vendor and vendee." It should be noted that the court does not undertake to state what the rule between vendor and vendee is, but upon an examination of the case it will be noted that the machinery was held to be real estate in that case because of the definition of real estate contained in the tax law.

In the case of *Herkimer Light and Power Co. v. Johnson, supra*, we find this language:

"We are of the opinion that the language in the . . . tax law providing that 'all mains, pipes, and tanks laid or placed in, upon, above, or under any public or private street or place for conducting . . . electricity or any property, substance, or product capable of transportation or conveyance therein or that is protected thereby' must be deemed applicable to machinery used in connection with the mains or wires generating or sending forth electricity on the lines or gas through the mains."

Whether or not this case was properly decided, it is a fact that the machinery there held to be real estate was so held because of the definition of "land" in the tax law and without

Herkimer Light & Power Co. v. Johnson, 37 A. D. (N. Y.) 257; *People ex rel. National Starch Co. v. Waldron*, 26 A. D. (N. Y.) 527; *Detroit United Ry. Co. v. Tax Commissioners*, 136 Mich. 96.

regard to the common law rule concerning fixtures. It has also been held in New York under the tax law that a switch-board and appliances essential for the business of a telephone company placed in a building on which it has a lease for ten years were properly taxable as real estate. (*People v. Longwell*, 131 N. Y. S. 361.)

CONCLUSIONS

The conclusions that can be drawn from the foregoing decisions would seem to be as follows:

1. That as a matter of law actual annexation other than by weight or connection with the motive power is necessary in order to make machinery or equipment realty.

2. That as a matter of law, in the absence of evidence establishing intent upon the part of the annexor to make the machinery or equipment attached a permanent accession to the freehold, attachment for the purpose of keeping the machinery or equipment steady and in place during the operation or use for which the machinery or equipment was intended is insufficient to make the machinery or equipment real estate.

3. That as a matter of law special appropriation to the realty to which the fixture is annexed is evidence bearing upon the intent of the annexor in making the annexation.

4. That the intent of the annexor in making the annexation is a mixed question of law and fact, but when the facts are found by jury or referee the application of such facts and the determination as to the character of the machinery or equipment based upon such facts is a matter of law. We cannot hope to reconcile all cases decided upon the intent of the annexor because the facts in each case concerning such intent are not always fully or sufficiently disclosed. The rule of most general application is that where the facts establish that the building is to be devoted generally to the exclusive purposes for which the attached machinery or equipment is to be used, is incomplete without such machinery or equipment, making both building and machinery or equipment specially adapted, the one to the other, the conclusion as a matter of law is that the annexor intended to make such machinery or equipment a permanent accession to the freehold. On the other hand,

where the facts establish that such machinery or equipment is not so incorporated with the building as to lose its identity, removable from the building without material injury to either the building or the machinery or equipment, and usable in other locations as well as in the building to which it is attached, the conclusion as a matter of law is that the annexor did not intend to make such machinery or equipment a permanent accession to the freehold.

5. That the foregoing conclusions do not apply between landlord and tenant because the tenant as a general proposition is permitted to remove any and all fixtures erected by him for trade, etc., in case they can be removed without material injury to the freehold, the tenant being presumed to have intended to remove his fixtures at the end of his term.

6. That cases deciding certain machinery or equipment real estate under the definition of real estate under the tax law have no application to the determination of the "law of fixtures" under the common law.

NEW YORK INCOME TAX LAW

Before closing, brief mention is made of the New York income tax act adopted June 4, 1917, and made applicable only to manufacturing and mercantile corporations. This income tax, imposed upon manufacturing and mercantile corporations in New York, was in lieu of any tax upon the franchises or personal property of such manufacturing or mercantile corporations. As this tax was in lieu of any tax upon personal property it became important to ascertain what machinery of manufacturing corporations should be taxable as real estate and what machinery of such corporations should be taxable as personal property, in order that there might be no discrimination between the taxation of personal property of mercantile corporations and personal property of manufacturing corporations, both classes of corporations being subject to the same income tax and at the same rate. It was ascertained that under the tax law of the state as construed by the state tax department practically all machinery of manufacturing corporations was made subject to taxation as real estate, regardless of its true character as real estate or personalty. In

order that there might be no discrimination in the application of the income tax as a substitute for any tax upon personal property the following language was inserted in the income tax act:

“After this article takes effect manufacturing and mercantile corporations shall not be assessed on any personal property, which for the purpose of this exemption shall include such machinery and equipment affixed to the building as would not pass between grantor and grantee as a part of the premises if not specifically mentioned or referred to in the deed, or as would, if the building were vacated or sold or the nature of the work carried on therein changed, be moved, except boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting.”

While this is an exemption from local taxation of certain machinery of manufacturing corporations, the corporations owning such machinery are in no way exempt from taxation because there is substituted in lieu of a tax upon such machinery an income tax the proceeds from which will many times offset any tax ever assessed or collected against such machinery. This provision would appear to be very broad, and in the first place would nullify the definition of real estate under the tax law as applied to machinery other than boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting, which articles of machinery were specifically made real estate and taxable as such under the income tax act. In the second place, all machinery, even though permanently affixed to the real estate, would be personal property in all cases where it would not pass between grantor and grantee as a part of the premises without being specifically mentioned and referred to in the deed. In the third place, all machinery or equipment which would be moved in case the building were vacated or sold or the nature of the work carried on therein changed would be deemed personal property for the purposes of taxation subsequent to the enactment of the income tax act.

Under this last provision it would seem that practically all machinery and equipment other than those articles specifically declared to be real estate which were not so incorporated as a part of the building as to make the moving of them imprac-

ticable, or as would necessarily cause material injury to the building or to the machinery to be moved, would be deemed personal property and not real estate. This is so, because in the light of reason it would appear that if a building were vacated or the work carried on therein changed, all machinery useful in any other building would certainly be moved for use in some other location. This would seem to be the only practical interpretation which could be put upon this provision if it were interpreted in the light of reason and in view of commercial custom. It is most certainly the custom when manufacturers vacate any building to remove therefrom such machinery and apparatus which is useful in other locations.

Therefore it would seem probable that under the income tax law in the state of New York practically all manufacturing machinery and apparatus other than boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting, which could be moved without material injury either to the machinery, the apparatus or the building, and useful in other locations, would be deemed personal property under such act. This provision has been construed by the state tax department of the state of New York in a bulletin dated June, 1917, for the information of assessors. The construction of the state tax department is as follows:

"This law includes as personal property 'such machinery and equipment affixed to the building as would not pass between grantor and grantee as a part of the premises if not specifically mentioned or referred to in the deed, or as would, if the building were vacated or sold, or the nature of the work carried on therein changed, be moved, except boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting.'

"In assessing the real estate of such corporations assessors are instructed to include:

"1. Boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting.

"2. Such machinery and equipment affixed to the building as would pass between grantor and grantee as a part of the premises if not specifically reserved in a deed thereof. This means such machinery and equipment so affixed that it cannot be removed without material injury to the building.

"Movable machines and equipment cannot now be assessed as a part of the real estate.

“Leased machinery and the machinery and equipment of a tenant cannot now be assessed as real estate, except boilers, ventilating apparatus and other machinery as described in paragraph ‘1’ above, which should be treated as a part of the building and assessed as real estate.”

I have endeavored in the foregoing to state briefly the common law rule concerning the taxation of machinery and fixtures, and in that connection have made brief reference to the application of such rule in connection with the New York income tax act. Whatever the law may be deemed to be in any jurisdiction, it would appear that the time has come for a classification of all tangible personal property and the subjection of such property either to a classified personal property tax or to an income tax in lieu of any ad valorem personal property tax thereon. As machinery and apparatus which can be moved from place to place are economically personal property, whether attached to real estate or not, and are necessarily subject to state and interstate competition so far as the manufacture of the product which the machine is designed to manufacture is concerned, it would seem that in any scheme of equitable taxation of tangible personal property such machinery and apparatus should be made personal property and not real estate so as not to have any discrimination between different kinds of tangible personal property.

THE FRANCHISE TAX AS A SUPPLEMENTARY BASIS OF TAXATION IN INDIANA

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The Indiana constitution requires the general assembly to provide by law for "a uniform and equal rate of assessment and taxation" and to secure "a just valuation for taxation of all property, real and personal", with certain exemptions that do not concern us here. I want to go further than my good friend Dr. William A. Rawles, who addressed the tenth annual conference of this association on "The income tax as a measure of relief for Indiana", and assert that an income tax as a supplementary basis of taxation in Indiana is strictly constitutional, for the reason that it is nowhere prohibited in the constitution and for the further reason, as Dr. Rawles pointed out, that various kinds of taxes are now being levied without any question as to their legality.

While it is not necessary to defend the constitutionality of a franchise tax under the Indiana constitution since the theory of such a tax consists in the right of the state to exact a return for a special privilege conferred in a particular form of organization allowed, nevertheless the franchise tax may amount to nothing more nor less than an income tax upon corporations. This is true whether the franchise tax consists of a flat rate upon net income, as in New York state at present, a progressive rate in accordance with net earnings upon capital employed, as prevailed in New York until this year, or a flat rate upon gross receipts, as prevails in Ohio, California, and other states.

While, therefore, Dr. Rawles would apply an income tax alike to persons and corporations, my purpose is to discuss what may amount to an income tax upon corporations alone. I say what may amount to an income tax because it appears that income is a very fair basis for determining what a franchise is worth to a corporation; or, if worth is objected to,

then what the franchise is able to yield the state for the protection it enjoys. In his proposed plan for an income tax for Indiana, Dr. Rawles would allow an exemption to the individual on dividends received from stock in any corporation or profits received from any partnership subject to the tax. This is manifestly fair, yet we do not have to trouble ourselves about the exemptions of individuals if our first reform in taxation is to consist in the adoption of the franchise tax alone.

I believe that the faults or defects of the general property tax have been recited so frequently before the membership of the National Tax Association that you do not care to listen to any further discussion of the shortcomings of a system of taxation that is retained principally because of real or assumed constitutional inhibitions. Likewise you will agree that conditions which have arisen in all the states where the general property tax still obtains are also current in Indiana. We may assume without proof, I think, that in Indiana some citizens pay vastly more taxes than they ought to pay and some pay vastly less; that the burden has come to bear heavily upon improved real estate, even though different parcels of real estate, and other classes of property for that matter, of like value and like productive power are assessed differently in different jurisdictions, or even in the same jurisdiction. There is practical agreement that improved administration will not correct the defects of the general property tax as applied to all classes of property, though there is also agreement that improved administration will correct the glaring defects of this system of taxation, so far as it ought to be retained, namely, in the assessment of real estate.

A comprehensive franchise tax law was first proposed in Indiana by Governor James P. Goodrich in his message to the general assembly of 1917. The governor's proposed scheme of taxation took the form of a bill levying, in addition to existing taxes on property, taxes upon miscellaneous business corporations based upon capital and annual earnings; upon public service corporations a flat rate upon gross receipts; and upon financial institutions a flat rate upon capital, surplus, and undivided profits. Very few corporations were exempt under the bill. Foreign corporations were taxable upon

the measure of capital employed in the state, this measure to be determined by the relation of assets located in the state to total assets. We are in great need of comprehensive tax reform in Indiana and I regard the bill which the governor defended valiantly throughout the session, though it failed to pass, as a logical beginning in tax reform. I want to add here that the franchise tax bill, or the "excise" tax bill as the governor chose to call it, shared the same fate as every other bill for tax reform presented to the general assembly. The state senate was equally divided politically and a strictly bipartisan political cabal voted down or smothered in committee bills for reform in the administration of taxation, the principles of which have the indorsement of reputable students of taxation everywhere.

But it is not especially upon the theory that the franchise tax is a beginning in tax reform that I want to speak of it. I believe the franchise tax to be eminently justified regardless of time or place. At the outset it is only fair to say that Indiana has no serious problem of raising additional revenue. In other words, our problem is not to raise more revenue but to distribute the present burdens of taxation more equitably. A direct state tax of 41.10 cents on the \$100 of taxable property in 1916 produced revenue amounting to \$8,357,606, while the remainder of the state's revenue for the year, \$3,267,892, came from the inheritance tax, miscellaneous fees, the tax on foreign insurance companies, receipts from the manufacturing trades school of the state prison, and from interest on public funds. The domestic and foreign incorporation fees are included in this sum and in 1916 amounted to \$300,742. The total receipts from all sources, together with a balance of \$719,044 carried over from 1915, made available the sum of \$12,445,326 and, after deducting all expenditures, there was left a balance at the close of the year of \$1,966,718. These figures, of course, do not include the state's various trust funds. Upon recommendation of Governor Goodrich, the state tax levy was reduced from 41.10 cents on the \$100 to 35.10 cents by the general assembly of 1917; and, notwithstanding the present high prices occasioned by the war, which affect especially the cost of maintaining our benevolent insti-

tutions, the loss of revenue occasioned by a court decision affecting oil inspection fees, and certain extraordinary expenditures to support the war program of the national government, present economies in the administration of other departments will leave the state sufficient funds to meet running expenses. I say this because it is not upon the theory that the state of Indiana needs more money for administrative purposes that the franchise tax ought to be adopted.

The argument for a franchise tax may be summed up in the following reasons:

1. The franchise of a corporation confers certain privileges, immunities, and benefits that are valuable concessions and it ought to be made to bear a substantial share of the cost of state government from which it is derived.

2. While the law provides in theory for the assessment of corporate franchises, it is impracticable and not now enforced.

3. The adoption of a franchise tax on corporations eventually would make it possible to discontinue our direct state tax altogether, thus leading to the segregation of sources of state revenue and other reforms in taxation which are conceded to be highly desirable.

4. The adoption of a franchise tax would relieve to some extent the present comparatively heavy burden on real estate.

5. The central administration which is necessarily a part of the franchise tax would bring the corporation under public control in one respect at least; and this is desirable because, with the exception of public service corporations and banks, the corporation is now merely licensed by the state and turned loose without being responsible to any definite restraining influences whatsoever.

6. The experience of other states fully justifies the collection of such a tax.

The franchise of a corporation must be admitted to be something of real and definite value. Whether we proceed upon the theory that the franchise tax is to be adopted in lieu of other methods of taxing corporations or upon the theory that the franchise tax is only a supplementary basis of raising revenue, we are still confronted with the fact that it is the

franchise of a corporation which constitutes the basis of its business activity. The franchise is granted by the state for a term of years, usually fifty in Indiana, and confers certain privileges, immunities, and benefits which the business world must prize highly or the corporate form of organization would not be so popular. Only by the consent of the state may a corporation chartered in another state be permitted to do business in Indiana, and this rule is almost if not quite universal.

Indiana is by no means a manufacturing state, yet the capitalization of its manufacturing enterprises alone was nearly \$670,000,000 three years ago. Today it must be nearly \$800,000,000. Manufacturing enterprises, public utilities, state banks, and trust companies, together with a mileage proportion of the capital employed in steam and electric railroads, aggregate a total capital employed in the state, the basis of which is the franchise granted by the state and under which every phase of business activity is carried on, of considerably more than \$1,500,000,000. Even this sum does not include the capitalization of mercantile enterprises, mining companies, elevators, warehouses, hotels, amusement companies, and a miscellaneous group of enterprises practically all of which are operated as corporations. The corporate franchise must be something which the business world reckons valuable or corporations would dissolve rather than wage a desperate fight to avoid a tax.

The limited liability which the stockholders of a corporation enjoy is a valuable immunity which, put to a final test, would bear a decidedly high burden of taxation. Moreover, the possibilities offered a few persons of administrative genius to assemble capital and issue shares of stock in return for it is a privilege of such great importance that business of every character has been builded around the plan. I am personally familiar, for instance, with one corporation worth in excess of \$2,000,000, the control of which has been held for ten years by a single man whose investment personally is less than \$10,000. From the point of view of the investors, the easy method by which property held in the form of shares of stock may be transferred is of the very greatest convenience and importance.

No one would undertake to maintain that the public has not derived benefits from the corporation, but so has the public derived benefits from every kind of enterprise, corporate or otherwise. But we do not hesitate to tax an enterprise merely because it has been helpful to the community, except perhaps charitable, educational, and strictly public institutions. The corporate franchise does not fall within this class of institutions.

The corporate franchise is largely escaping taxation in Indiana. It may be said that this is the fault of the general property tax. Whatever the cause, a franchise tax law would correct the fault and to that extent, at least, would be a departure from the general property tax. The Indiana law, however, provides for taxing the franchise of a corporation, but scarcely anybody will maintain seriously that any effort is made to follow the law. It is perhaps true that the local tax officials know vaguely that there is a law requiring the taxation of corporate franchises, but they have never studied its text and have no information whatever as to how it is to be applied. We call the value represented by the franchise, corporate excess of going value over physical assets. The local tax officials are generally unable to determine the excess of going value over physical assets, even if they had a disposition to do so, which they have not.

Some time ago I made an examination of the assessment rolls of two Indiana counties. In one county I found 13 corporations assessed at 32.5 per cent of their real value as going concerns, according to the most conservative ratings of commercial agencies. In the same county, 21 parcels of farm property were assessed at 45.5 per cent of their true value as determined by sales of land. Sixteen parcels of city property in the county seat were assessed at 61.7 per cent of their true value as determined from sales of the parcels. In another county, five corporations were assessed at 8.3 per cent of their true value, while 10 parcels of farm property were assessed at 33.5 per cent of their true value, and 10 business lots in the county seat were assessed at 38.7 per cent of their true value. I am led to believe that, assuming 100 per cent as a basis, there is a difference of from 10 to 20 per cent between the

assessment of Indiana corporations and Indiana real estate. As a matter of fact, however, if we take the assessment of corporations as a basis we find that real estate is assessed all the way from 50 to 500 per cent higher than corporations. Local tax officials are for the most part unable to fix a proper valuation of corporations under the Indiana law and it would be impossible for a central administrative body to follow the law and make initial assessments. In practice, corporations are assessed in accordance with political expediency and little or no account is taken either of their ability to pay or benefits derived.

We had an investigation by a state tax commission last year and, while the work of this commission fell short of its goal in many respects, it did develop some facts to which I expect presently to refer. With a reservation for certain public service corporations that are already taxed as high as the average property, I want to pass to the third argument; namely, that eventually the adoption of a franchise tax will make it possible for the state to discontinue the direct state tax, effect the segregation of sources of state revenue, and these steps will naturally lead to other reforms in taxation which, if ever adopted, must be adopted piecemeal.

It is to be remembered that the direct state tax of 41.10 cents on the \$100 yielded about \$8,500,000 in 1916. Since that time the levy has been reduced to 35.10 cents, which on the same valuation will produce about \$7,000,000, which with other revenue is enough to meet present expenditures. Half this sum could be raised easily from fees that have long been common in other states and the other half might well be raised from the franchise tax. The adoption of such a plan of taxation would leave the local government free to assess and collect a tax on real estate and such other physical property of corporations as it might be thought wise to tax. If we are to have a classified property tax, revenue from a tax on money and credits and professional services and large salaries might well be left to the local government. It is true, perhaps, that a substantial tax on the franchise of corporations ought to be accompanied by an exemption from the tax on personal property, but the rate could be changed as this end was reached.

With the exception of telephone and natural gas companies, the public utilities corporations of Indiana appear to be paying their fair share of taxes. This exception applies only to the smaller telephone companies. The large companies pay at least their fair share of taxes. Some of the public service corporations pay a great deal more than they should pay and others pay a great deal less, but on the whole their taxes seem to compare favorably with the taxes of other forms of property. I do not attempt to say that a franchise tax adopted under present conditions will remove these inequalities, but I do think it will lead directly to the adoption of what is the only fair basis of taxing public service corporations, that is, their gross earnings.

I have been able to collect complete data for 26 electric light and power companies valued by the public service commission of Indiana. These 26 electric companies were valued for rate-making purposes at \$17,501,579. Their gross earnings during the year in which their valuation was completed amounted to \$4,496,823 and they paid altogether in taxes the sum of \$279,273. In other words, they paid 6.2 per cent of their gross earnings in taxes and this was equivalent to a rate of 1.6 per cent on their value for rate-making purposes. A rate of 1.6 per cent is equivalent to a rate of 3.2 per cent upon a valuation of 50 per cent. While any burden in the form of taxation laid upon public service corporations is borne ultimately by the consumer in higher rates, and while it appears that these companies are already paying their fair share of taxes, nevertheless the collection of an additional tax upon their gross earnings at a low flat rate, upon the theory of taxing their franchises, would point the way to such a thoroughly better method of taxation that I favor the experiment.

Fifteen water companies valued by the public service commission paid 13.8 per cent of their gross earnings in taxes and this was equivalent to an ad valorem rate of 1.5 per cent, or 3 per cent upon a 50 per cent assessment. Twelve telephone companies paid 4.8 per cent of their gross earnings in taxes, and this was equivalent to a rate of 1.2 upon their value for rate-making. Six heating companies paid in taxes what was equivalent to 1.5 per cent of their value for rate-making.

Several natural gas companies paid only 2.9 per cent of their gross revenue in taxes and this was equivalent to only 0.34 per cent of their value for rate-making. Five artificial gas companies paid 6.7 per cent of their gross revenue in taxes and this was equal to a rate of 1.5 per cent upon their cost of reproduction new, or value for rate-making.

Most of these rates seem high enough indeed, but the point is that the inequalities which now obtain ought to be removed and the gross earnings tax at a flat rate adopted. The relation between gross earnings and valuation for rate-making is so nearly constant for the different classes of utilities that, in my opinion, it is an eminently fair basis. For instance, in Indiana an electric light company will require an investment of about \$3.75 to return \$1.00 of gross earnings. This ratio will differ in different parts of the country and to some extent in different parts of the state, on account of freight rates on coal and density of population, but the ratio is fairly constant. Every dollar of gross earnings from a water company represents an investment, in Indiana, of from \$7.50 to \$8.00. The element of efficiency in management, of course, will vary these figures but not materially.

To my mind, the gross receipts tax is the fairest and most desirable form as applied to public service corporations. It ought to apply to steam railroads, electric interurban railroads, express companies, pipe line companies, sleeping car companies, and perhaps others. A franchise tax would be a beginning. It is not necessary to discuss the distribution of revenue derived from a gross receipts tax on public utilities and other public service corporations. It is only necessary to say that a satisfactory division as between the state and local governments can be worked out.

I want to pass to the fourth argument in favor of a franchise tax, namely, that it would, by whatever amount it will produce, reduce the burden on improved real estate. An investigation made last year by the special state tax commission, authorized by the sixty-ninth general assembly in 1915, disclosed that 8,774 different parcels of land and lots located in 36 different counties of Indiana were assessed at 38 per cent of their value as determined by actual sales. The assessment

of these 8,774 parcels of real estate was \$8,758,919, and their true value \$23,177,967. Of these 8,774 different parcels, 3,102 were land and 5,672 were lots, distinguishing between farm and city real estate. Farm real estate was assessed at 35 per cent of its true value and city real estate at 41 per cent of its true value. These assessments are not in themselves significant. Prevailing rates must be considered to get a true perspective of the nature of the burden. In Stark County, for instance, where farm real estate was assessed at 23 per cent of its true value, the average total tax rate was \$3.67 on \$100. In Clark County, where farm real estate was assessed at 56 per cent of its true value, the average rate was \$2.43. The Stark County rate is equivalent to a rate of 85 cents on the full valuation, while the Clark County rate is equivalent to one of \$1.36 on full valuation.

But this disparity in true rates is not the worst phase of the situation. The demand of local governments, county, township, and also municipal—many of which, by the way, are lamentably inefficient—for additional revenue has resulted in constant pressure on the tax authorities, who have placed the added burden not where it ought to rest but where resistance was least likely to be shown. The more or less casual investigations of the tax commission disclosed, for instance, 23 different parcels of real estate in Indianapolis assessed at 105 per cent of their true value, and 22 parcels assessed at 142.8 per cent of their true value. I suppose it is true of the general property tax everywhere, but in any event I am certain it is true in Indiana: the heavy assessments on real estate at present fall upon the small property holder, of which a very good type is the home owner. The tendency to increase the burdens of the small property or landowner is the most disturbing aspect of the present situation.

If we were always quite certain that these extraordinary assessments would fall upon real estate lying out of use it is doubtful whether we ought to object, but the truth is these heavy assessments are more likely to be borne by real estate that is improved because land held solely for a rise in value generally enjoys the protection of a vigilant owner, so far as taxes are concerned. In the state as a whole, 353 parcels of

land and lots were assessed at 86 per cent, 173 parcels assessed at 106 per cent, and 188 assessed at 147 per cent of their true value. In view of prevailing rates, it is a rather startling fact that nearly five per cent of all real estate is assessed at more than 100 per cent of its true value, and of this five per cent over one-half is assessed at 147 per cent of its true value. Lake County is conspicuous for low valuations and high rates. Five hundred and two lots were assessed on an average at 21 per cent of their true value. Nevertheless, five lots in Lake County were assessed at 139 per cent of their true value and, while I do not know where those five lots were situated, it is quite possible that some of them were in Hammond, where the current rate on the \$100 valuation is \$5.74; in Lowell, where it is \$5.42; or in Gary, where it is \$5.22.

At the same time it is to be remembered that the corporations of Indiana for the most part are underassessed. Their valuation for the purpose of taxation is fixed by a local board of review whose investigations are by no means thorough, whatever else may be said of them. The feeling persists that it is wise politically to deal carefully with corporations in the matter of assessments because their power is to be reckoned with in campaign years. I have already called your attention to the assessment of corporations in two typical counties of the state and, while I do not want to go into detail, an investigation I made last winter shows a relatively worse condition in Marion County, where Indianapolis is located, than in Noble or Fayette. The corporation enjoys an advantage over the individual owner of real estate because in the former case more than one vote is involved. The franchise tax will not remove discriminations as between different corporations but it will serve to shift the weight of the burden and this ought to be done. The simplicity of applying the franchise tax commends it most emphatically, of course, over the so-called corporate excess method of taxing corporations.

Passing to the fifth argument in favor of the franchise tax, it would bring the corporation somewhat within the pale of public regulation and make it responsible in some measure to state authority. Indiana has been very lax in dealing with corporations. There is, for instance, absolutely no way to de-

termine how many corporations there are in the state because thousands of corporations have been chartered and passed out of existence without formal dissolution, surrender of charter, report to the state government, or any act whatsoever. It would be a wholesome service on behalf of the public to clear the state records through a state tax law that would require a payment of taxes or the forfeit automatically of these thousands of charters that no longer mean anything. Notwithstanding the valuable privileges enjoyed under a corporate charter which I have already cited, the organization of a new corporation is not regarded seriously in Indiana because almost everybody knows the privileges are bestowed and immunities assured without any adequate return exacted. The incorporation fee is 0.1 per cent and this would be sufficient if there were any further obligations. A continuing tax on this privilege would create a different attitude on the part of the public not only towards their state government but towards the corporation itself, and serve to stabilize the position of the corporation in the world of business, making the franchise more valuable.

At the present time the public service corporations and banks only are subject to regulations of a comprehensive character and even public service corporations are subject to a haphazard method of assessment and taxation. The assessment of corporations ought to be removed from the domain of local politics altogether and the tax administration centralized. A considerable number of corporations would profit by an arrangement for assessment by a centralized authority, because even corporations are sometimes overassessed. The franchise tax with the necessary state-wide machinery for enforcing it would be a notable step in that direction.

It may be argued that there are other angles to the tax problem which ought to be approached before the franchise tax is proposed. The same legislature which killed the franchise tax bill also killed a bill providing for the assessment of public utilities by the state board of tax commissioners and another which provided for appointment of county assessors by the state board of tax commissioners and of township assessors by the county assessor, and for reassessments by the

state board of tax commissioners in any township of the state at the expense of the township. These features, so universally accepted by students of taxation as the elements of reform, were voted down with little or no consideration of their merits.

There is a final argument in favor of the franchise tax that is not to be ignored. During the year 1916 the states of California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island—12 states—raised less than 21 per cent of the total revenue needed for the support of the state government from a direct state tax. Of the \$215,634,047 raised for the support of these various state governments, only \$45,170,116 came from a direct state tax. While not all this difference of \$170,463,931 was produced from franchise taxes, a considerable portion of it did come from this source. The point is that the franchise tax has been adopted widely already and I know of no definite movement to discard it.

New York probably has had a wider experience with the franchise tax than any other state. Prior to 1890 practically all revenue for the support of the state government was derived from a direct tax upon property. Since 1890, however, an increasing portion of the state's revenue has come from indirect sources; in fact, the revenue from indirect sources has increased from \$3,237,575 in 1890 to \$40,724,314 in 1915. During the years between 1906 and 1910, inclusive, no direct tax whatever was levied for the support of the state government. The amount of revenue that will be produced by the new franchise tax of three per cent upon the net income of manufacturing and mercantile corporations is uncertain, but unquestionably it will be much greater than that produced by section 183 of article 9, the law which levied a tax in accordance with dividends; especially since manufacturing corporations to the extent of capital actually employed in the state in manufacturing and in the sale of products of manufacturing were exempt under section 183 of the law as in force until June 4, 1917. Of course, manufacturing and mercantile corporations under the new franchise tax law are exempt from all other state and local taxes on personal property; but if New York is to be judged by Indiana I think their officials

who are charged with the burden of raising revenue must be quite willing to accept a three per cent tax on net revenue in lieu of that raised previously under an ad valorem tax on personal property. There have been many attacks on the franchise tax laws of New York state but they have withstood practically every assault made upon them and today are more firmly intrenched than ever before as an established method of raising revenue. I think the history of the agitation for improved methods of taxation in New York state fully justifies this statement.

Not only has the franchise tax become more firmly intrenched than ever before, but as a method of taxation its popularity is rising and not waning. Methods of applying the tax will change, of course, but it is the theory of the franchise tax that I have sought to uphold and not the details of any particular plan of levying it. It is particularly appropriate as an adjunct of the general property tax and ought also to be accepted as a fair departure from it by those students who seek the adoption of a straight income tax on industrial enterprise. Moreover, the expense of administration will be comparatively small, because at a small additional cost it can be collected with the machinery already in existence, not only in Indiana but wherever it is yet to be adopted.

TENDENCIES IN THE TAXATION OF THE CAPITAL STOCK OF CORPORATIONS

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The point to be emphasized in this paper, which shall be expository rather than argumentative, is that there do exist certain well-defined tendencies in the taxation of capital stock. In the scope of the discussion only the property tax is included, and our subject is not to be confused with the so-called franchise tax proper—which is but a privilege fee, the gross or net earnings tax applied to corporations in some states, or the income tax now also a part of the federal scheme—since these alternative levies have no necessary relation to the actual value of the corpus of the property so burdened.

Under the well-established and familiar American *ad valorem* system the right of the state to take her toll of revenue from all property alike is a tenet of taxation which has been so generally approved that it is now firmly crystallized into judicial doctrine.

The proneness of many corporations in rendering tax returns is to slur over, minimize, or wholly disclaim any special value attaching to their securities by virtue of the unique and guarded scheme of organization under which they operate. An equally marked trend on the part of the courts before whom various test cases have been brought is to deny most emphatically the assumed right of corporations to withhold from the tax rolls this important class of protected property.

I. THE CORPORATE IMPETUS IN BUSINESS

Business organization is comparatively new. We have only to look back a half dozen decades to see the beginning of industrial activity in corporate form. Scarcely more than a generation ago the law-making bodies of both state and nation, either by a benevolent impulse of patronage or by some more sinister influence, were moved to extend to private corpora-

tions exemptions, bounties, subsidies, immunities, and other special advantages which at the present day would not be countenanced for a moment. Witness the railroad land grants, the protective tariff, exclusive franchises, specific tax exemptions, special charters of unlimited scope, irrevocable and carrying *in perpetuum* the class legislation of an unhappy page of our history now forever sealed. As the companies began to expand and to accumulate wealth and political prestige, there was bred in them a tendency to extend the itching palm and to claim as a matter of right what had heretofore been bestowed merely as a privilege—to encourage infant industries.

On the other hand, the public, wincing under discriminations which gradually had come to be recognized as unfair, erred in the opposite direction by a hostility as unjust as it was impolitic. Hence, we find in constitutions formulated during the reconstruction period following the Civil War certain far-reaching guaranties indicating a purpose to treat corporations with the same even-balanced impartiality as natural persons in the enforcement of their duty to the state. During this swing of the pendulum "equality and uniformity" clauses were written in capital letters in the fundamental law of a majority of the states, and the fourteenth amendment was engrafted upon our federal constitution. Corporate interests soon awoke to the fact that they could expect no further special privileges, but must journey along in the same boat with the business man or partnership laboring without the artificial garb.

II. SHIFTING PUBLIC ATTITUDE TOWARD CORPORATIONS

Since the principal decision I have been requested to review is the Bodcaw Lumber Company back-tax case, I shall be pardoned, I trust, if the constitutional history of my native state is presented as typical of the southern group. Arkansas will be selected as a concrete example of what may be regarded as the reaction in fiscal policy following the changes above adverted to.

David Y. Thomas, professor of history and political science in the University of Arkansas, says in his *History of Taxation in Arkansas*:

“Down to the constitution of 1868 the theory seems to have been that no property was subject to taxation unless specifically named. The constitutions of 1836 and 1864 simply provided that all property subject to taxation should be taxed according to its value, and that the rate should be uniform throughout the state. . . . Beyond that the legislature was left to its discretion as to what should be taxed and what exempted.

“The constitution of 1868 and that of 1874 made all property, real and personal, and all moneys, credits, investments in bonds, joint stock companies, etc., subject to taxation. . . . And the constitution of 1874 makes a few exemptions and forbids the legislature to make any others, and it is expressly declared that the power to tax corporations and corporate property shall never be surrendered or suspended.”

The guarded language introduced for the first time in the constitution of 1874 [Article 2, sections 2, 19, 23, 29, and Article 16, sections 6, 7] speaks with resistless eloquence the positive will of the people of that day, uttered through their representatives in that memorable convention.

Prior to the adoption of the constitution of 1874 the Arkansas legislature had frequently granted tax exemptions or other wholesale gratuities to sundry private corporations. The annals of that tempestuous period reveal the acute state to which public sentiment had been goaded during the reconstruction era following the Civil War and immediately preceding the Brooks-Baxter war. It was from motives born of the exigencies of the hour, therefore, that the framers of our fundamental law strove so desperately to forestall future favoritism. If they veered to the other extreme and produced what may from an academic view be deemed a harsh instrument in its attitude toward capital, the fact only emphasizes the true intent of its fiscal provisions. It was with a fresh realization of the painful embarrassment occasioned by extravagant public concessions to private interests that the delegates to the constitutional convention of 1874 determined to make an end of the whole iniquitous policy.

III. ERA OF CONSTRUCTIVE LEGISLATION

Following this political readjustment came a period when legislatures undertook to define in advance of administrative experience certain fiscal words and phrases. Through the inaccurate use by lawmakers and law expounders of economic

terms such as "wealth", "property", "capital stock", "franchise", and the like, interminable confusion resulted—so grievous as to delay for forty years the solution of tax problems of the first importance. And let me say in passing that, had the revenue acts of the '70's and '80's been drawn with foresight and with a true and scientific conception of the legal status of the corporation, a great pecuniary loss to the public treasury would have been averted and the annual taxes due from the prosperous concern would have been collected contemporaneously with its accumulation of profits. Fool-proof machinery for assessing corporate property would have forestalled the salutary office of the odious back-tax statute and perhaps made its enactment unnecessary.

It is significant to read some of the earlier decisions involving the taxation of capital stock and to check them up with later conclusions, sometimes of the same tribunal, after experience and administrative wisdom had exploded the old theoretical concepts. In *Union Steamboat Co. v. City of Buffalo*, 82 N. Y. 351 (1880), for example, the court took the technical position that because the corporation had fixed its domicile at an obscure village, while its business was in reality conducted in Buffalo, the situs for the taxation of its capital stock was in the village instead of the city, and thus permitted it to escape the greater volume of its taxes, that portion due the municipality. In striking contrast is *Home Fire Insurance Co. v. Benton*, 106 Ark. 552; 153 S. W. 830 (1913), where the same subterfuge was essayed by the corporation, but which was promptly held by the Arkansas court to be simply an abortive attempt at tax evasion and not permissible. Further examples of the upward trend of judicial thought will be spared for the present and we shall pass to the main underlying principle which the courts have adopted for the assessment of capital stock.

IV. THE "UNIT RULE" IN TAXATION

The taxation of corporate property under what is known as the "unit rule" is intrinsically sound and just and conforms to natural justice. It is a scientific method of arriving at the "faculties" of the taxpayer—his ability to pay. Prof. E. R.

A. Seligman, of Columbia University, former president of our association, in the revised edition of that classic, his *Essays in Taxation* (1913), approves the unit rule from an academic viewpoint (pages 150-1) as “a necessity in order to properly assess the corporation’s franchise as property”. According to this authority, in nearly all the states which levy an ad valorem tax the so-called “unit rule” prevails. By this is meant that instead of the property of the corporation being valued piecemeal, its entire value is appraised as a unit. Whatever the method of ascertaining that value, the point is that *the entire value* of the corporation is taken as a unit.

The same author in his *Principles of Economics* (1914), at page 269, says:

“The value of a complex product or business may bear only a slight relation to cost. The value of a livery stable differs somewhat from the value of reproducing the horses, carriages, harnesses and buildings; the value of a huge steel plant differs considerably from the cost of the land, the buildings and the machinery; the value of a railroad has still less relation to its cost of production or of reproduction. In such cases we have to do not only with reproducible products, like the concrete articles of steel or the acts of transportation, but with non-reproducible commodities and relations, like the good will of the firm, the favorable location of the railroad, the ability of the managers, and all the other factors which cannot be duplicated, but which enhance the profitability and therefore the value of the business. Their selling value is a capitalization of their estimated future uses.”

And again at pp. 269-70 of the same treatise:

“In America corporations are, for reasons already mentioned, usually assessed on their capital value. How, now, is this to be measured? The corporate securities are often not dealt in on the stock exchange, and even when there are such dealings, the daily prices may be affected by speculative causes. The cost of production is of slight assistance, because it can manifestly apply only to the concrete tangible property, and is even there inadequate. It is for this reason that the valuation of the *corporate franchise*, as the chief intangible element, has become such a burning question in the United States.”

The author goes on to say that “no final solution of this problem is possible until property assessments are brought into a definite relation with *earning capacity*”.

V. CAPITAL STOCK AS A TAXABLE SUBJECT

The property of a corporation can exist only in the two classes, real estate and personalty; but the latter may in turn exist in two forms, tangible and intangible. Each of the three kinds thus uncovered stands upon the same basis for tax purposes, except in the few states where classification is authorized and which levy a lower rate on intangibles. The first two, real estate and tangible personalty, are taxed in the mode applicable alike to natural persons. Intangibles, including credits, liquidated demands, leases, and contracts, and unliquidated elements, such as choses in action, good will, and franchises, must undoubtedly also be taxed. The identification of intangible property, however, is often difficult, and to reach it there must be a segregation and a valuation; and so its assessment, say the courts, can be fairly, though perhaps imperfectly, accomplished by the usual statutory procedure: a process of unit valuation of the capital stock as the first step, and the deduction of the tangible portion as a second and final step.

No legerdemain, no over-reaching, no shortchanging, merely an honest effort by the state to put her hands on that ever elusive and unseen product of concerted human industry, termed corporate excess, perhaps of great, perhaps of small value, yet if of any value at all, truly the proper subject of a tax. It is manifestly indeed the product of industry, skill, and good management, the human elements of the corporate make-up; but, also, it is none the less peculiarly and necessarily the subject of governmental conception, nurture, and protection.

Mr. William O. Matthews, attorney for the Ohio Tax League, at our first conference in 1907 brought to the attention of this association the unit rule of assessment as "a hope for the future". Only a measurable realization of his prophetic vision has been accomplished within the decade; and in the boundless field over which he stretched his hand we have even yet only begun to mobilize.

It has been said that the unit rule and the accompanying garnishment principle were borrowed by the states from the federal scheme which permits the taxation of the shares *in*

solido in lieu of the assets of national banks. But this is erroneous, since the mode was in vogue in Vermont in 1849, in Iowa and Missouri in 1858, and in several other states long prior to June 3, 1864, the date of the federal act establishing national banks. [*Tappan v. Merchants National Bank*, 19 Wall. (86 U. S.) 490.] Justice Miller in *National Bank v. Com.*, 9 Wall. 353; 18 L. ed. 701, decided in 1869, delivered the first utterance of the United States Supreme Court upholding the plan, declaring: "It has been the practice of many of the states for a long time to require of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only mode of doing this in all the New England States" (p. 361).

To trace the historical development of this garnishment idea, already, as we have shown, a favorite feature of administration when adapted by Congress to national banks, would serve no present purpose; so we shall rapidly note some of the "torch-bearers" of judicial opinion which have lighted the arduous path to the legal taxation of capital stock.

In *Com'rs v. Blackwell-Durham Tobacco Co.*, 116 N. C. 441; 21 S. E. 423 (1895), the court expressed this truism: "in any corporation reasonably prosperous the capital stock is worth much more than the bare real and personal property, which is 'the dead body', so to speak, of the corporation, should it cease to live and move". In *Hyland v. Central Iron & Steel Co.*, 129 Ind. 68 (1891); 28 N. E. 308; 13 L. R. A. 515, it was held that "where the tangible property of a corporation is of less value than the capital stock, the capital stock is taxable to the extent that it exceeds in value the tangible property", and that in such case there is no "double taxation". Here the capital stock was first valued at \$60,000, from which was deducted the value of tangible property, \$27,830, leaving a balance representing the corporate excess of \$32,170, the assessment of which as "capital stock" was sustained.

And so runs the trend of decisions in nearly all the states, the dominating purpose being to tax all attainable sources of value. A dictum of the highest court of the land, in perhaps the sharpest tax contest of modern times, expresses the ulti-

mate *ratio decidendi* in burning words which have lost none of their force by frequent repetition. Said Mr. Justice Brewer in the Express Company cases: "It is a cardinal principle which should never be forgotten that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation." [*Adams Express Co. v. Ohio*, 166 U. S. 185, 220-1 (1897).] And the distinguished jurist does on to explain: "Whenever separate articles of tangible property are joined together, not simply by a unity of ownership but by a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property."

On the original determination of this celebrated case, February 1, 1897, Chief Justice Fuller delivered the opinion of the court [165 U. S. 194; 41 L. ed. 683, 696] and had quoted approvingly from the Supreme Court of Ohio in *Poe v. Jones*, 51 Ohio St. 492, where it was declared of "the market value of the capital stock" of any concern that—

"It cannot properly be said not to be its true value in money. . . . because good will and other elements indirectly enter into its value. The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated; and the fact that it is its market value cannot be questioned because attributed somewhat to good will, franchise, skillful management of the property or any other legitimate agency."

And Mr. Justice Brewer in denying a rehearing March 15, 1897, further elucidated the legal status of corporate stock when a wide disparity exists between its actual value and that of the tangible property owned by the corporation, which in this case consisted of pouches, safes, dray horses, etc., worth only a few thousands of dollars. Quoting further the court's own words [166 U. S. 171; 41 L. ed. 960, 978]:

"To the owners thereof, for the purposes of income and sale, the corporate property is worth hundreds of thousands of dollars. Does substance of right require that it shall pay taxes only upon the thousands of dollars of tangible property which it possesses?

"Accumulated wealth will laugh at the crudity of taxing laws which reach only the one and ignore the other; while they who own tangible

property not organized into a single producing plant will feel the injustice of a system which so misplaces the burden of taxation. . . .

“The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income or for purposes of sale.”

The constitutions of most states in which the general property tax prevails require, and the legislature has generally enacted, that all property belonging to a corporation, whether tangible or intangible, is included in the taxing provisions. To carry out this intent, it is made the duty of the assessor first to list each item of tangible property found, including real estate, and place a valuation thereon; then if by examination of the special corporate schedule it appears that the “amount and value of capital stock paid up” exceeds the aggregate tangible property already listed, the difference, or the amount of such excess, is extended on the personal tax books against the corporation for its proportional burden under the common levy.

VI. RULE WHEN THE ASSETS ARE BEYOND BOUNDS

If, however, the real estate and personal property lie outside the taxing state and have not been taxed therein, the grounds for a deduction do not exist and the full amount of the capital stock must be extended without deduction or abatement whatever. This rule applies only where “capital stock” means “shares in the hands of the stockholders”. The fact that Louisiana or any other foreign jurisdiction taxes local property, which indirectly imparts value to other taxable property situate in Arkansas, cannot and should not diminish the latter state’s control or power over such property within her own bounds. This is the keynote to the *Bodcaw* case to be presently reviewed. Among the decisions of courts of last resort which follow this rule a few may be briefly noticed.

In the early case of *St. Albans v. National Car Co.*, 57 Vt. 68-86 (1883), the court granted a writ of mandamus to compel the company, a domestic corporation, to pay taxes upon the shares of stock owned by non-resident stockholders. While the corporation’s principal place of business was at St. Al-

bans, in Vermont, it owned a large number of freight cars hired to railroads within and without the state. Most of its tangible property was shown to be permanently located outside the state. Taft, J., delivered the opinion of the court and said:

"The owner of stock is not merely the owner of a right to dividends, but he is the owner of a proportionate share of the property of the corporation; and we think that for this reason it has well been held that the law which creates the shares may separate them from the person of their owner, for the purpose of taxation, and give them a situs of their own. *Tappan v. Merchants National Bank*, 19 Wall. 490 (1874).

"There is a still stronger reason why the taxation in question was valid. The corporate home of the company is in this state; the corporation is expressly subject to the exclusive legislative authority of the state; its dwelling is here, although it may do business elsewhere; and its members, when they enter into the relation of stockholders, do so subject to such changes in the law relating to the corporation as the supreme legislative authority deems it proper to make. . . .

"From the principles stated, it logically follows that the provision of the statute requiring the corporation to pay the taxes is not in violation of the constitution of the United States."

In the leading case of *American Coal Co. v. Alleghany County*, 59 Md. 185 (1882), the court denied the company's claim for an abatement in value of the capital stock on account of coal lands situate across the state line in New Jersey, saying:

"Though such value [the value of the shares of stock] may be dependent upon investments made beyond the jurisdiction of the State, yet such investments, whether in real estate or otherwise, cannot be traced by the tax commissioner and be made the subject of abatement of the true value of the shares of stock. In the first place such inquiries would be impracticable in their very nature, and in the second place such abatements would be eminently unjust to the state."

In *Cheeseborough v. San Francisco*, 152 Cal. 549; 96 Pac. 288 (1908), \$400,000 of the property of the Tacoma Milling Company was located in the state of Washington, and only \$21,000 in California. The court denied the right to a deduction in valuing the capital stock for the portion invested in the foreign state, and held that the taxing of property in another state does not make the taxation of the stock in California double. In the language of the court:

“ Neither is it of moment that the tangible property of the corporation is situated in some other state and has there been taxed. The fact that some of the property of the corporation is assessed in another state or country is no prohibition of the taxation of the shares of stock held here. This does not constitute taxation of all the property of a corporation within the terms of the section. The inhibition of double taxation only applies to such taxation in the same state or government.”

Perhaps the most celebrated tax litigation that ever arose in the state of Georgia, whose hospitality we now enjoy, grew out of the attempt of Wm. A. Wright, comptroller general, who, by the way, is on our reception committee, to collect taxes on 15,000 shares of stock (worth \$1,500,000) held by the L. & N. R. R. in an Alabama railroad, not one foot of which was situate in Georgia. The contest under the able generalship of Judge John C. Hart, now state tax commissioner and also one of our hosts, was finally determined in favor of the tax by the Supreme Court of the United States, and Mr. Justice Holmes in the opinion [195 U. S. 219; 49 L. ed. 167 (1904)] used this language:

“ The Georgia constitution requires the taxation of all property subject to be taxed in Georgia, and, while it may be that the constitutional requirement is sufficiently complied with when the land and chattels which give value to the stock pay a tax, without another tax on the stock, there is much more difficulty in saying that the words [‘within the territorial limits,’ used in Ga. Code 1895, § 5883] are satisfied if stock is left untaxed when the land and chattels cannot be reached. Probably the constitution does not go further than to require one tax on all attainable sources of value, even if it permits more, but it certainly seems the intent to tax once, at least, all property which can be come at in any way. A tax in another state is no tax for the purposes of the state of Georgia.”

In *Commercial National Bank of Ogden v. Chambers*, 21 Utah 324, 347; 61 Pac. 560 (1900); 50 L. R. A. 346; 182 U. S. 556; 45 L. ed. 1227, the Utah supreme court refused to allow a deduction in the assessment of the bank's capital stock for the \$19,000 worth of real estate owned in Nevada, declaring:

“ Under the power of taxation, property must be treated as it exists here, without reference to that of another state where we have no jurisdiction whatever. Stock of a bank or corporation located in this

state, being property within the meaning of our revenue laws, must be treated as such.

"The true criterion is the true value of the stock, without reference to the question where or in what manner or nature of property or security the capital stock may be invested. Whether that be invested in real estate or other property beyond the jurisdiction of this state, the latter having control over the shares and their true value, the peculiar nature and value of the investment of the corporation beyond the limits of the state can form no proper subject for specific deduction from the true value of the shares when presented to be assessed for taxation."

This decision was affirmed on appeal to the United States Supreme Court. Mr. Justice White, speaking for a unanimous bench, used this decisive language:

"There is obviously no merit in the contention that reversible error was committed, because of the refusal to deduct from the value of the shares of stock the assessed value of real estate owned by the bank situate in other states than Utah.

"While real estate of a bank situate outside of the state of domicile is taxed in the state of its situs, yet the value of such real estate necessarily enters into and is considered in estimating the value of the shares of stock; and to deduct the value of real estate would, to the extent of such deduction, reduce the real value of the shares without a compensatory equivalent."

The appellate court of the "Empire State" of New York, in *People ex rel. Panama R. R. Co. v. Commissioners*, 104 N. Y. 240; 10 N. E. 437 (1887), refused to allow the railroad company a deduction for its investment of \$9,000,000 of its capital stock in real estate in the republic of New Granada, concluding its opinion with this apologetic language: "It must be admitted that this rule operates harshly and unequally, since it results in double taxation on a great share of its taxable property, but the remedy is with the legislature."

In *ex parte State*, 188 Ala. 401; 66 So. 1 (1914), the pro rata deduction of tax exempt Alabama bonds, in which a part of the capital stock of the Alabama Fidelity and Casualty Company was invested, from the value of the shares in that corporation held by appellee Lovejoy was held "unwarranted" and taxes were exacted in full.

VII. THESE CASES DO NOT INVOLVE DOUBLE TAXATION

Double taxation has been the stumbling block in the way of a unanimous concurrence by certain of the courts in the views herein set forth. But this false argument has been fully answered by the discriminating text writers, such as Cooley, Judson, Beale, and Gray.

In *Kidd v. State*, 125 Ala. 413; 28 So. 490 (1900), the bugbear of double taxation was led forth from its lair and thoroughly exorcised in a test case carried up to the federal Supreme Court under the fourteenth amendment. The state sought to tax the shares of stock owned by a resident in a foreign corporation whose entire assets lay and were fully taxed outside the state. In 188 U. S. 730; 47 L. ed. 669 (1903), the court of last resort pointed out that "with the grievance that the property and franchises of the corporation are taxed elsewhere the state of Alabama is not concerned." And it added a suggestion which may well be referred to the Council of States, when that ambitious volunteer shall venture to enter the unplowed field of the conflict of laws. Said Justice Holmes:

"No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the Constitution of the United States does not go so far.

"The State of Alabama is not bound to make its laws harmonize in principle with those of other states. If property is untaxed by its laws, then for the purpose of its laws the property is not taxed at all. . . . Shares of stock may be within a state, and the property of the corporation outside it."

VIII. CLARIFICATION OF LEGAL THOUGHT

And so it is a false principle for which many of the companies have contended: that there is no taxable value beyond and above the aggregate sum reached by combining the separate values of the several items of real estate and personalty belonging to the corporations. A value that is intangible is also unthinkable to those who like Ananias would "keep back a part of the price". In other words, this tribe of tax-dodger

contends that "there is no such animal" in the economic zoo as a franchise value other than that of public utilities—franchise corporations proper. This fallacy is due to confusion of terms. We are told by all the authorities that there are two classes of franchise, general and special, or primary and secondary, the primary being that right—inalienable in legal theory—which the state grants to the incorporators to exist as an artificial corporate unit; and the secondary franchise being the right to carry on a special line of operations. But no reasonable court and no reputable text writer has challenged the proposition that both classes—the franchise "to be" and the franchise "to do"—are *valuable*, and both therefore constitute property.¹

Thus the law has become fairly well settled in every jurisdiction that the special privilege or immunity enjoyed by an owner of corporate stock and likewise shared in the aggregate by all his associates is a thing of value, whether we call it franchise, good will, net worth, book value, earning capacity, capital stock, corporate excess, or what not. Its essential nature as property is not affected by the incident of nomenclature. Its very intangible quality makes it like fraud exceedingly hard to define. The supreme courts of the states of Alabama, Arkansas, and Kansas have described rather than defined it as the equivalent of the aggregate outstanding shares. In Kentucky and California it is called a franchise; in Illinois, Iowa, Indiana, Mississippi, North Carolina, and various other states it answers to the plebian name of capital stock; while in Massachusetts and a few of the older communities the child has been christened by the high-sounding cog-

¹ Joyce on Franchises, Sections 6-8.

West River Bridge Co. v. Dix, 6 How. 507, 534; 12 L. ed. 535 (1848).

Society for Savings v. Coite, 73 U. S. 594, 606; 18 L. ed. 897 (1867).

Adams Express Co. v. Kentucky, 166 U. S. 171; 41 L. ed. 960 (1897).

Wilcox v. Consolidated Gas Co., 212 U. S. 19, 44; 53 L. ed. 382 (1909).

12 R. C. L. p. 175, Sections 2, 3; *Ib.* p. 216; Sec. 42.

2 Morawetz, Corp., Sec. 929.

3 Thompson on Corp., Sec. 2862.

1 Purdy's Beach on Private Corp., Sec. 55.

1 Clark & Marshall, Private Corp., Sec. 286.

2 Cyc. of Law of Priv. Corp., sec. 1148-9.

nomen corporate excess, a title invariably conferred on this youth when he goes to college and sits at the feet of such masters as our honored leaders Seligman, Plehn, Bullock, Adams, Fairchild, and the rest. But whatever we dub this pampered product of modern business organization, whether a good name or a bad name, we have no right to disinherit him. On the other hand, since he has plainly reached majority—indeed, fallen within the draft ages of twenty-one to thirty-one—he must bear his just and equal burden of responsibility by falling into ranks as a soldier of that gathering fiscal army so essential to our government in time of war as well as peace.

IX. TAXATION OF SHARES AT THE SOURCE

It was in *Harris Lumber Co. v. Grandstaff*, 78 Ark. 187; 95 S. W. 772 (1906), that the Arkansas court first construed the statute requiring a special corporate tax schedule, declaring that it “makes the capital stock a subject for taxation and makes it the duty of the corporation to give to the assessor a statement showing the amount and value of it”. This decision also held that the corporate domicile was the situs for taxation, and was followed by *McDaniel v. Texarkana Cooperation and Mfg. Company*, 94 Ark. 235; 126 S. W. 727 (1910), applying the same rule to a foreign corporation, whose tax situs was there held to be its principal place of business within the state.

In the recent case of *Bellows Falls Power Co. v. Commonwealth*, 222 Mass. 51; 109 N. 9. 891 (1915) the Supreme Court, after an exhaustive review of the decisions, speaking through Chief Justice Rugg, said (p. 60):

“ If the power exists in the state creating the corporation to establish the situs of its shares of stock for the purpose of taxation, and is exercised, it may be absolute, and no other state can inquire into the character or extent of that taxation in an effort to tax its own citizen who is a stockholder in such corporation.”

In *Wiley v. Com'rs*, 111 N. C. 397; 16 S. E. 542 (1892), the court used this language:

“ The legislature has power to fix the situs of all such taxables, and it has in effect, by the statutes quoted, fixed the situs of stock in domestic,

manufacturing and other named corporations at the residence of such corporation."

And in *Com'rs v. Blackwell-Durham Tobacco Co.*, 116 N. C. 441; 21 S. E. 423 (1895), the court said:

"The effect [of the exonerating statute] is merely to change the situs of the shares for taxation from the residence of the owner to the locality where the chief office of the corporation is situated, as held in *Wiley v. Com'rs.*, 111 N. C. 397. It simply extends to the collection of taxes due by shareholders in other corporations the mode of collection already in force as to shareholders in national banks." U. S. Rev. St., Sec. 5219.

In the recent case of *Harvester Building Co. v. Hartley et al.*, 98 Kas. 732; 99 Kas. 73; 160 Pac. 971 (1916), the principal battle was fought over the meaning of the term capital stock in statutes analogous to that of Arkansas and to those of perhaps a score of other commonwealths. Counsel for the company urged that capital stock means the funds or property owned by the company to carry on its business. But the court rejected this assets theory and held the plaintiff to a payment of taxes upon the actual value of its capital stock, i. e., its shares in the aggregate. Quoting from the court's opinion:

"The obvious purpose of the statute is, in effect, to require the corporation to list for taxation and pay the taxes upon the property which otherwise the shareholder would have to return and answer for. The law undertakes to reach the property of the individual through the organization. . . .

"We think the fair meaning of the statute is that the corporation shall determine the value of its stock (that is, of all the shares of stock issued and outstanding, which will necessarily be the value of its possessions and rights, including franchises and good will, in view of the use made of its property and the business it does, a value corresponding to its earning capacity) and deduct therefrom the assessed value of any specific property in the county which is separately listed, returning the difference as the additional amount for which it is taxable, subject to review by the proper officers."

In the Kansas case, which by the way has been commented upon by our worthy president, Honorable Samuel T. Howe, in the BULLETIN for November, 1916, the defendant Harvester Building Company was a land-holding corporation. It owned

no property except a single piece of improved real estate and did no other business than to rent that property under a long-term lease to the International Harvester Co. The court said:

"It would seem that the value of its stock in the sense indicated would be nearly or exactly the same as that of its realty.

"The values, however, would not necessarily be precisely the same. The demand for shares of the corporate stock might be better than for real estate, causing a difference in market value. The advantages incident to doing business as a corporation might enable the owner to realize an income from the property larger than could otherwise be obtained, or could be expected upon the basis of its mere market value.

"No inequality or injustice results from the interpretation adopted. The holder of stock in the corporation is the person ultimately interested in the matter. He ought in fairness to pay a tax in proportion to its actual value. The law in effect requires this and nothing more.

"If the corporation puts a just estimate upon the value of his stock (with that of others), and he is required to pay (through the corporation) a tax based upon that amount, less the assessed value of property upon which the corporation is otherwise taxed, he can suffer no wrong thereby. If the physical property is overvalued, he is compensated by the consequent reduction in the tax on the stock; if the physical property is undervalued, no hardship ensues, since he gains thereby what he loses in the increased stock assessment. Compensation is automatically provided; the net result being always the same."

A similar conclusion was reached by the Supreme Court of Mississippi on April 2 of the present year in the case of the *Fithian Land Company v. Johnston, Revenue Agent*, 74 So. 694 (1917). This likewise was a contest over the taxation of the corporate excess, or the difference in value between the aggregate shares of stock and the real estate itself, considered at its separate intrinsic worth. So firmly intrenched was the southern court in its conviction upon the principle involved that the decision of the lower court upholding such taxation was affirmed orally and without comment.

X. THE BODCAW LUMBER COMPANY CASE

We have now progressed to a consideration of the recent decision of *State of Arkansas ex rel. Attorney-General v. Bodcaw Lumber Company*, 128 Ark. 505; 194 S. W. 692 (1917). This decision, while presenting a phase of the law of infrequent occurrence in the reports, by no means announces a

novel doctrine. A detailed review of the case will doubtless be profitable to this conference, composed as it is of delegates from separate sovereign states, each recognizing no limitation from another upon its own taxing powers.

The Bodecaw Lumber Company was a domestic corporation, operating a saw mill near the border lines of Arkansas and Louisiana. Its mill and principal place of business was at Stamps in Arkansas, while much of its real estate lay in Louisiana. The aggregate value of its shares of capital stock was \$2,000,000, 51 per cent of which had an actual situs in Arkansas and 49 per cent on the foreign soil. The attorney-general sued under a special statute to recover overdue taxes alleged to have accrued upon the capital stock. There was no claim of underassessment of any of the taxable items actually returned by the company, but the sole issue was on the capital stock not returned, and the proper taxable value thereof under the neglected special schedule.

It was necessary, therefore, to determine: (1) the statutory mode of taxation of capital stock; (2) its proper valuation; and (3) the effect thereupon of the Louisiana holdings. The decision of the issues involved the construction of several provisions of the revenue law whose essential features may be thus epitomized:

(1) The constitution requires all property to be taxed, and at an equal and uniform rate, and expressly prohibits all exemptions. [Const. 1874, Art. 16, Sec. 5, 6, 7.]

(2) By statute, stock in corporations is declared to be personal property and required to be taxed to the owner thereof. [Kirb. Dig., Sections 6872, 6873 et seq., 853.]

(3) An exonerating statute (with counterparts in nearly all the states) relieves any person from including in his assessment any shares of stock held by him in any corporation required to list its own capital and property for taxation in the state. [Kirb. Dig., Sec. 6902.]

(4) The corporation is required, like natural persons, to return an ordinary list of its property within the state, specifying separately the number or amount and the value of each article owned, including moneys and credits. [Kirb. Dig., Sections 6872, 6899, 6910.]

(5) In addition to the ordinary list, a special schedule is required by a statute (also having a counterpart in various states) making it the duty of the president, secretary, or agent of every corporation to annually deliver to the assessor of the county where it does business "a sworn statement of the capital stock", setting forth:

- (a) The name and location of the company;
- (b) The amount of capital stock and number of shares authorized;
- (c) The amount of capital stock paid up and the market value of the shares;
- (d) The amount of its debts, except for current expenses;
- (e) The true value of all tangible property belonging to the corporation. [Kirb. Dig., Sections 6936-7.]

The officers of the lumber company had returned the ordinary list, but had failed to furnish the special schedule above described. This they omitted possibly upon the supposition that having returned their property *in specie* under the ordinary list they had made all the assessment rightfully required.

But the court, after a most deliberate consideration, sustained the state's construction and held: (1) that the purpose of the special schedule was to ascertain the total value for tax purposes of all the outstanding shares of stock, defining that value to be their actual worth in the hands of the shareholders; (2) that the duty devolved upon the corporation to make this return for its shareholders; (3) that in calculating the valuation of capital stock, so taxable, there can be deducted from such gross value the specific property (tangible or intangible) otherwise paid on by the company in Arkansas, but nothing else; and (4) that to allow the deduction contended for, represented by the corporation's property in Louisiana, would be to go further than existing constitutional restrictions permit.

The court, speaking through Chief Justice McCulloch, after reviewing the several constitutional and statutory provisions, declared that the statute (Kirb. Dig., Sec. 6902), relieving the individual shareholder from listing his stocks, must be construed with the corresponding duty imposed on the corpora-

tion (by Kirb. Dig., Sec. 6936) to return the special schedule. In the language of the opinion, "the two provisions are in harmony".

XI. EXCERPTS FROM THE OPINION

The legislative scheme provided is not merely to assess the property of the corporation itself, but to include the value of the shares of stock and tax them at the source.

The word "capital stock" used in the statute means the aggregate value of the shares of stock in the hands of the shareholders, though the value of the shares of stock themselves does not constitute the limit of taxation. The purpose of the lawmakers was to merge the separate valuations of the shares of stock into the aggregate valuation of the whole and thus constitute the compound as a basis for fixing the valuation for taxation purposes, after deducting the value of the tangible property which is to be specifically assessed separately. In this way the lawmakers have provided a scheme for the taxation of all of the elements of value of this property one time and only once, and the tax is levied at the source and paid there without any assessment being levied against the individual shareholders.

The scheme absolutely excludes any idea of double taxation, but it does provide an adequate means of including all the elements of value contained in the shares of stock and the tangible property of the corporation itself, merged into a composite whole.

The assessment of the property is in name only against the corporation, for it includes the elements that go to make up the value of the shares of stock themselves. The assessment does not include both the shares of stock separately and the aggregate whole as represented by the capital of the corporation, for that would be double taxation; but the scheme does, as before stated, contemplate that all of the elements of value be considered in fixing a basis of value which will include every species of property involved.

The two species of property, that is to say, the shares of stock held separately in the hands of the shareholders and the property of the corporation itself, do not contain the same elements of value. The capital of the corporation is represented by its tangible assets; whereas, the shares of stock contain only the element of market value, which may be increased or decreased, by the value of the earning capacity of the corporation, above or below the market value of the property owned by the corporation.

The statute expressly provides that intangible as well as tangible values shall be taxed, and shares of stock represent the taxable intangible value, subject to reduction to the extent of the value of the tangible property in the state which is taxed separately. If the state should tax only the tangible property in the state, it would get no benefit whatever from the element of value represented by the earning capacity of the

corporation and nothing in return would be received in the way of taxes for omitting from taxation the shares of stock in the hands of the individual holders, thus working a complete exemption of that class of property.

So when these different elements are considered together, we have a taxation scheme which embraces them all in making up the true valuation for assessment purposes.

With the court's reasoning up to this point there can be no serious disagreement on the part of anyone familiar with the rigid rule of uniformity obtaining under the all-embracing scheme of a general property tax. And the court was unanimous, it is understood, in its views so lucidly expressed by the Chief Justice. But at this juncture—on the question of deduction—the court divided; and while no contrary opinion was filed, two dissenting justices declined to deny the right of the company to deduct from the ascertained value of the capital stock the amount invested in Louisiana lands. On this point the chief opinion continues:

Such being the state of the law with respect to the method of assessment and the elements to be considered, the question arises whether or not there should be a deduction of tangible property outside of the state over which the state has no jurisdiction and which is taxed elsewhere. Our statute expressly provides that tangible property of the corporation shall be assessed separately, but this does not include, of course, the assessment of property outside of the boundaries of the state, for the power does not extend that far. But it does not necessarily follow because the property owned by the corporation is in another state and is taxed there, that its value must be deducted from the blended valuations which are assessed for taxation in this state. That construction would lead to a partial exemption of the shares of stock from taxation, and we cannot presume that the legislative scheme contemplates such a thing, for it is contrary to an express provision of the Constitution which prohibits exemptions from taxation. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254; 133 S. W. 1113.

The statute hereinbefore quoted which authorizes the omission from the personal assessment lists of shares of stock in a corporation is limited to such corporations as are required to list their property for taxation and if it be held that the property of the corporation outside of the state is not to be listed, it would necessarily follow that the shares of stock themselves must be separately listed and taxed against the owners thereof. Such was obviously not the intention of the framers of the statute, even though the tangible property is situated beyond the limits of the state, for there is no provision for an assessment of the shares of

stock against the owner in the cases where the corporation itself assesses its property partly in this state and partly in some other state.

The state undoubtedly has a right to assess all the property of the corporation and its shareholders in this state and to consider all the elements of value in levying the assessments. It does not attempt to assess the property outside of the state either directly or indirectly, nor does it attempt to assess the capital of the corporation as represented by the value of property outside of this state. What it has attempted to do in the statute hereinbefore outlined is to introduce into the assessment the elements of value attaching to the shares of stock themselves (even though it may be based on property of the corporation situated outside of the state), and thus "to require one tax on all attainable sources of value." *Wright v. L. & N. Railroad*, 195 U. S. 219; 49 L. ed. 167.

This view of the statute prescribing the method of taxation reconciles the assessment without such deduction with those decisions of the United States Supreme Court which hold that the assessment of the property of a corporation cannot include property outside of the state and also with those which hold that the shares of stock themselves can be assessed even though property which goes to make up the value thereof is situated beyond the borders of the state. *Delaware L. & C. Ed. Co. v. Pennsylvania*, 198 U. S. 345; 49 L. ed. 1077; *Hawley v. Malden*, 232 U. S. 1; 58 L. ed. 477.

The statute which we deal with in the present case contemplates an assessment of the shares of stock themselves, or at least the separate elements of value which they represent, and the state has a right to impose the assessment at their value without deduction of property outside of the state. In other words, there is a clear distinction between an assessment solely of the corporation property and a composite assessment such as is provided under our statute for the taking into consideration of all of the elements of value, including the shares of stock therein.

The statute and the assessment which the state attempts now to make thereunder is not an evasion of the rule against double taxation, as the court indicates was attempted under the Pennsylvania statute, but it constitutes merely an attempt to assess the valuation of property in this state and tax it only one time according to its true elements of value.

In considering the validity of a taxation scheme, we look to the effect and to the result sought to be accomplished, rather than to the mere form or to the use of the name in designating the method of taxation, and when this is done we discover the intention of the lawmakers to tax in the name of the corporation the shares of stock themselves, without deduction, as is our right, of the valuation of property outside of the state which goes to make up the valuation of the shares of stock.

The statute provides for a separate taxation of the tangible property of the corporation in the state, and the valuation of the property thus separately assessed must be deducted from the total valuation assessed against the corporation. *Hempstead County v. Hempstead County Bank*,

73 Ark. 515; 84 S. W. 715. *Harris Lumber Co. v. Grandstaff*, 78 Ark. 187; 95 S. W. 772. *Arkadelphia Milling Co. v. Bd. of Equalization*, 126 Ark. 611; 191 S. W. 410. *Harvester Bldg. Co. v. Hartley*, 98 Kas. 732; 99 Kas. 73; 160 Pac. 971. The deduction, however, can only be of the property in this state which is assessed here, for the sole object of the deduction is to prevent double taxation. *Hempstead County v. Hempstead County Bank*, 73 Ark. 515; 84 S. W. 715. It should not include property outside of the state, for that is not taxed here.

Upon other principles hereinbefore indicated the valuation of the property outside of the state must be omitted when the property of the corporation itself is sought to be taxed, but when the effort is to assess the values of the shares of stock, it should not be deducted, for those shares of stock have a separate valuation existing here within the jurisdiction of the state and upon which the state has a right to take its toll of taxation.

Our conclusion, therefore, is that the state is correct in its contention that the failure of the defendant corporation to make return of its capital stock without deduction of the value of tangible property outside of the state was a violation of its duty and that the property was and is subject to taxation.

The views of Justice Wood, for nearly thirty years a member of the Arkansas court of last resort, in a concurring opinion, leave nothing equivocal or obscure in the position taken, which we have tried to show is in line with the consensus of economic and judicial thought. Quoting from Justice Wood's opinion:

The assets of the corporation of every character and wherever located may be taken into consideration by the assessing officers in ascertaining the value of the shares of stock. The situs of the shares of stock—capital stock—for the purpose of taxation, is the domicile of the corporation.

The value of tangible property owned by the corporation beyond the jurisdiction of the state must be taken into consideration in determining the value of the shares of stock, for such property is one of the elements or factors giving value to the shares of stock, and the value of such property, in so far as it enters into the calculation or estimate made in determining the value of the shares of stock in the aggregate, cannot be deducted from the sum thus ascertained to be the value of those shares, for this would be but climbing the hill and sliding back to the starting point. It would be tantamount to excluding the tangible assets of the corporation in other jurisdictions from consideration in the calculation necessary to determine the aggregate value of the shares of stock.

It is not double taxation to adopt this plan for ascertaining the value of the shares of stock, or capital stock, for the reason that only the value of the shares of stock so ascertained is taxed in this state. The

tangible property of the corporation outside of the state is not taxed here at all, and could not be, for that is taxed in the jurisdiction where it is located. But such property is only considered in so far as it contributes to give value to the shares of stock which the state has a right to tax, at their source, that is, the domicile of the corporation.

XII. CONCLUSION

In this review I have tried not to inject my personal convictions upon the vexed questions involved; but the original purpose has been followed, to present what appear to be prevailing tendencies in the taxation of capital stock. These tendencies, it has been shown, are distinctly divergent—towards the south pole of generalization of values by the companies themselves, and towards the north pole of specialization by the taxing powers. In this persistent struggle there may one day be reached a happy mean between the two extremes. Let us hope, indeed, that the utopian land of truth may be found not too near the equator of purely academic test, but in the temperate zone of sound and rational practice, where justice between corporations and community is most likely to be conserved.

DISCUSSION

MR. EDMUND F. TRABUE, of Kentucky: Since I came here I have heard these Kentucky franchise cases discussed on all sides, and when I consider the whole litigation from beginning to end and the process of assessment which has been so elaborately and well described by Mr. Tarbet, I am not surprised that great interest as well as great difficulty has arisen in the consideration of the cases.

Mr. Huffaker told the conference of the situation as it existed in Kentucky prior to the adoption of our recent tax amendment, which has been adopted since the decision of these cases, or rather since these cases arose. The chairman of the board of equalization of the state of Kentucky, in describing the situation, once said: "The result is that after the number of lists that the assessor arbitrarily increases is added to the number the county board of supervisors raises there remain about 95 per cent of the people in the state who fix the sum themselves upon which they are willing to pay taxes; and it is a safe assertion that 99 per cent of that 95 per cent are not inclined to pay a great amount."

We had a new board of valuation and assessment in Kentucky. That is not the railroad commission. We had there so peculiar a system of assessing railroads that I am not surprised that it is not understood. It probably never was intended by the legislature, but arose out of construction of the statutes by the court of appeals of Kentucky. The railroad commission assesses what is supposed to be the tangible property, although the statute provides that it shall be assessed as a common carrier of freight and passengers, which evidently includes a franchise. Then we have another board, of valuation and assessment, which is charged with the assessment of the franchise value of public service corporations, and by construction very late in the history of the statute it was determined that the latter board must assess the franchises of the railroad companies as of other public service corporations.

The particular road that I represented was assessed by the railroad commission, assessing supposedly tangible property, at \$12,500,000. That was probably about 52 per cent of the value of the tangible property. The franchise had been in previous years assessed at about \$4,500,000, and was at once raised to \$14,500,000; it was confessed that that was 100 per cent of value. Also, it was insisted by the franchise board that they must, under a provision of the constitution of Kentucky, assess at 100 per cent of its value. It mattered not to that board that the assessors throughout the state did not do their duty but assessed other property on an average of 52 per cent.

Nevertheless, the board which we then had in Kentucky assessed four of the railroads in the state at 100 per cent, notwithstanding the situation shown here, and that fact stood out all through the litigation in the district court and in the Supreme Court of the United States, and was a living witness to the importance of the equal protection of the laws. While it seems apparent that the Supreme Court was not able to get a majority of the judges on the federal question, or at least that seems the inference, it reached the same conclusion by construing the state constitution and virtually, as some of us think, reversing the rule that the Supreme Court will always follow the construction placed by the state court upon a state constitution. What the Supreme Court said, referring to the decision of the Kentucky court in a previous case in 105 Kentucky, *Louisville Railway Company v. Commonwealth*, was that the fact should be emphasized that the Kentucky court of last resort, far from holding that discrimination such as is here complained of is in accordance with the constitution and laws of the state, has recognized distinctly that it is not, but has felt constrained to hold that under circumstances similar to those of the present case there is no redress in the courts of the state and that the constitutional provisions for equality and uniformity are capable of being put into execution only through the selection of proper assessing officers. This, while admitting the wrong, merely denies judicial relief and is not binding upon the federal courts.

So the Supreme Court granted us the relief which we were

so clearly entitled to, based upon a construction of the state constitution, reaching at least a conclusion directly opposite that reached previously by the state court in the Louisville Railway case, we think, because of the cogency of doing us justice under circumstances calling so loudly for it. The Supreme Court also declined to decide the federal question in our case, and I probably ought to call attention to the fact that except in the Illinois Central case, where the jurisdiction was based both upon diverse citizenship and the federal question, there was no ground of federal jurisdiction at all except the federal question. The Supreme Court said that the invocation of protection of the fourteenth amendment was sufficient to give jurisdiction to the federal court, and that obtaining jurisdiction the federal court would decide all the questions in the case, even if it found it unnecessary to decide the federal question, citing two previous cases (Siler case, 213 U. S., and Ohio tax cases, 232 U. S.) which fully sustained that position. Then the court reached the conclusion that it was unnecessary in this case to decide the federal question because it had concluded that we were entitled to the remedies claimed under the state constitution. The court said:

“The next question in order is whether the assessments have the effect of denying plaintiffs the equal protection of the laws within the meaning of the fourteenth amendment. It is obvious, however, in view of the result reached on the question of state law just discussed, that the disposition of the case would not be affected by a different result reached upon the federal question, for no other or greater relief is sought under the equal protection clause than plaintiffs are entitled to under the provisions of the constitution and laws of the state to which they have referred. Therefore we find it unnecessary to express any opinion upon the question raised under the fourteenth amendment.”

In this connection I should call your attention to some vital points in this case. First, that the discrimination that is the basis of relief in cases like this must be an intentional discrimination, not an accidental assessment, of a person or corporation, higher or lower, or the accidental assessment of a number of persons or corporations higher or lower in proportion to value than others, but an intentional disregard of the requirement of equality which is shown by the excessive assess-

ment of a class; and the habitual, the general, or in one case, as the court says, notorious discrimination, because in those cases it then appears that the state through its officers has intentionally and not accidentally denied the equal protection of the laws.

Then again, the Supreme Court has held over and over again, for example in *Bell's Gap v. Pennsylvania*, 134 U. S., and in *Merchants' Bank v. Pennsylvania*, 167 U. S., that the federal constitution does not forbid states discriminating between classes of property even with reference to the rate; that they may charge one rate upon one class and another upon another class but they must not discriminate between different members of the same class. In Kentucky, by reason of section 174 of the constitution, all taxpayers were constituted one class, so that the discrimination between the railroads and the individuals amounted to a discrimination between members of a class, and that was the basis of our fight, the ground upon which the district court put the decision in our favor, and the Supreme Court recognized it when it determined that the state constitution was infringed by making a discrimination between members of the class. I call special attention to that circumstance.

These seem to me to be the leading features and the difficult features to understand in the decision of the Supreme Court in these cases. Jurisdiction was invoked on the ground of the fourteenth amendment. It was recognized on the ground of the fourteenth amendment, and the question on the fourteenth amendment was not decided.

With reference to the other questions in the case alluded to by Mr. Tarbet, we thought we had a perfectly clear case, but the lower court decided against us and the Supreme Court of the United States affirmed the judgment of the lower court. I cannot help thinking that the Supreme Court was so overwhelmed with admiration for the unbounded industry of the district judge that they concluded they would take his decision as they got it. If you will take the opinions in 209 *Federal Reporter*, page 380, and read for about 80 pages, or until you get tired, then in 230 *Federal Reporter*, page 191, and read somewhat less, you are bound to be overcome with admiration

for the untiring industry and learning of the judge who made these decisions. The same judge, as aforesaid, had decided the original Coulter case. He had been reversed by the Supreme Court and when we brought up these cases he at once said: "Why, I decided with you, that was my opinion, but the Supreme Court reversed me." We said: "No, the Supreme Court simply said the evidence was not sufficient." We convinced him of that, and he decided in our favor, as I said before, and the Supreme Court of the United States now affirms him.

In justice to Mr. Tarbet I must say that the grounds upon which the Supreme Court puts the decision (sufficient evidence of which did not exist in the Coulter case) have been supplied by Mr. Tarbet's industry. He went to the United States census; he dug up the reports of the board of equalization and then of the tax commission, and we presented to the Supreme Court a comparison of values as shown by the census and as shown by the assessors, and we showed confessions made by the state officers and the commission appointed by resolution of our legislature; so that we almost had our case proved by confession, with the result that we presented to the Supreme Court a case of such merit that we think it could not have been decided otherwise.

The Supreme Court invoked the decisions of state courts all over the United States construing constitutional provisions similar to the constitution of Kentucky. If you will read the cases cited by the Supreme Court, the Illinois cases especially, you will see that there was presented to the Supreme Court a case so forcible in the requirement of uniformity that they simply could not escape it; and, although the federal question remains, we are bound to believe that whenever the time comes to decide the federal question it will almost unquestionably be determined in line with the principle found in the state constitution in our case.

MR. J. F. ZOLLER, of New York: When I read the program of this conference I noted the subject, "The franchise tax as a supplementary method of taxation, with especial reference to Indiana". What I assumed the gentleman from Indiana

would discuss was what we ordinarily term a franchise tax, a tax on a corporation because it is a corporation, and in addition to the same taxes that individuals and partnerships ordinarily pay. I was happily surprised to find that when the gentleman wrote this paper he came to the conclusion that, while he favored a franchise tax, he believed it should be in lieu of some other equitable tax that could not be enforced in the locality. I am not opposed to that sort of franchise tax but I never thought that kind of tax was a franchise tax at all.

In New York, where there was substituted an income tax upon manufacturing and mercantile corporations in lieu of any tax upon personal property and also in lieu of the franchise tax that was then required to be paid by those corporations, the income tax was called a franchise tax, not because it was a franchise tax, as we all understand the term, but because under the constitution we had to call it a franchise tax in order to let the state board of tax commissioners administer it. We knew that we could not have a proper income tax unless it were administered by central authority. That is the reason that the New York state income tax is called a franchise tax. It is only to get around a constitutional prohibition. I do not object to that kind of franchise tax.

Why not have, as the gentleman from Indiana suggested, a classified personal property tax or an income tax in lieu of an ad valorem tax on personal property, which cannot be collected? I will not say it cannot be collected from a corporation, but it probably cannot be collected from the individual. I think the gentleman stated that it was more difficult to collect a tax upon a corporation than upon an individual. It is known that you cannot collect an ad valorem personal property tax upon the individual, but I think if you went at the matter seriously you could probably collect more from the corporation than from the individual. Of course, if we are to have this tax in lieu of some other tax, it is not necessary to discuss this valuable consideration which it is alleged the corporation gets from the state. I contend, whether this consideration is valuable or not, that if you tax the corporation upon all its property or upon all its income, you have taxed all the valuable considerations it got from the state, including the fran-

chise and everything else, because such value is either reflected in the value of the property or in the amount of net income and you cannot find it anywhere else. If you have taxed the property or income you have taxed the franchise. If you try by hocus-pocus method to impose another tax called a franchise tax you discriminate against corporations and in favor of individuals who do not own corporate securities.

Though I cannot see the purpose of it, it was stated, I believe, that this particular privilege was the reason for corporations becoming corporations; that because of the value of the franchise they obtained they incorporated. If that were true probably there would be no such thing as a copartnership or individual business. It is not because of that valuable privilege that individuals incorporate their business; it is because there is put up to business in this country and everywhere else propositions involving vast requirements of capital. So many people need to be interested in the enterprise, all of whom cannot participate in the management, that you have to have this form of organization. You cannot get the people of California, for example, to invest capital in an eastern business unless the organization is in corporate form. The corporation is a business necessity. In my opinion, a corporation is nothing more than a very efficient business instrument, and I think it is economically wrong to penalize an efficient business instrument by imposing a franchise tax after you have taxed everything else the corporation has.

Another point made in the paper was that this franchise tax would bring corporations under the control of the state. I do not intend to discuss that. It may be that corporations ought to be controlled by the state and by the United States, but that is not a tax question. Indiana has the power to pass any law she sees fit to control corporations in that state. She can decide what foreign corporations can do business in the state, and what corporations cannot do business there. With the exception of corporations engaged exclusively in interstate commerce, she can exclude foreign corporations altogether. She can prevent the organization of corporations in the state if she sees fit to do so. But the question of regulation never was and probably never will be a taxation question.

Another statement was made, that a franchise tax would make it possible for the state of Indiana to do away with any direct state tax. In other words, it would make it possible for Indiana to separate her state and local revenues. If Indiana has not done that yet let me advise her not to do it now. If the question of separation of state and local revenues is involved in any legislative enactment it is usually enough to condemn the act. I believe an income tax could be adopted in Indiana, or a classified personal property tax could be adopted and the receipts collected by state officials and paid back to the locality. This would not involve the separating of state and local revenues. If it be necessary to call a tax a franchise tax to meet a constitutional objection, as was done in New York, there should be no objection to the mere name. There is no objection to the word "franchise" if it denotes a proper income or classified personal property tax. I am opposed to a franchise tax upon corporations in addition to all other taxes upon individuals, copartnerships, and corporations, as contradistinguished from a fair income tax called a franchise tax to meet constitutional objection.

I wish to say that the bill that the governor of Indiana wanted last year did not impose the kind of franchise tax that the gentleman from Indiana advocated in his paper today. The governor simply took the position that the property tax was not working well in that state and, therefore, suggested a franchise tax upon corporations in addition to all other taxes. He did not intimate that he wanted the franchise tax substituted for any other kind of tax. The corporations were to be subject to taxation the same as before and in addition were to be subjected to a franchise tax, which was said to be for the purpose of equalizing the situation in Indiana. If the property were not properly assessed in Indiana would it equalize the situation by singling out one class of taxpayers and making them pay more revenue, disregarding the inequalities that existed between taxpayers in general?

MR. JAMES M. GRAY, of New York: There is a difficulty that occurs to me with respect to the statement that the whole value of a corporation's privilege is reflected either in the value of

its property or, as I understood, in its net income. As to the value of the corporate privilege, I have in mind a concrete case that will present the question better than an abstraction.

A corporation was organized and property bought at a cost of \$400,000. The corporation issued bonds and the sellers of the property to the corporation took in payment an issue of bonds of about \$1,000,000 and an issue of stock of \$10,000. The practical advantage of corporate organization consisted in the ability to throw the securities into the form of bonds and not into the form of stock. In that case the net earnings of the corporation were simply the earnings after deducting the interest on \$1,000,000 worth of bonds. The power to issue the \$1,000,000 worth of bonds and get the property into that form was an incident of corporate organization. The value of that corporate organization, it appears to me, might not possibly be reflected there and it might not be reflected in the value of the property.

EIGHTH SESSION

THURSDAY EVENING, NOVEMBER 15, 1917

CHAIRMAN—NILS P. HAUGEN, WISCONSIN

ROUND TABLE SESSION

1. HOW MAY REASSESSMENT STATUTES BE ADMINISTERED WITHOUT CAUSING A POLITICAL UPHEAVAL?

Orlando F. Barnes, Chairman Michigan State Board of Assessors, Lansing, Michigan

William B. Fellows, Secretary New Hampshire Tax Commission, Concord, New Hampshire

Samuel Lord, Chairman Minnesota Tax Commission, St. Paul, Minnesota

2. DISCUSSION

3. REPORT OF COMMITTEE ON RESOLUTIONS

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HOW CAN REASSESSMENT STATUTES BE ADMINISTERED WITHOUT CAUSING A POLITICAL UPHEAVAL?

ORLANDO F. BARNES

Chairman State Board of Assessors, Lansing, Michigan

Taxation is a burden which the taxpayer has the right to demand shall be equitably distributed. In the scheme of the general property tax the assessment of property has been devised for the purpose of measuring and distributing taxation to the individual taxpayer. It has no other function in any taxation system, but for that purpose is the only factor employed. Any inequality in assessment, therefore, necessarily results in inequality of burden in taxation.

Our state and national conferences have frequently threshed over the question of how inequality of burden in taxation can best be remedied. While they have agreed that, theoretically, the remedy is to attack the source of the evil and equalize the individual assessments, in practice the feeling of apprehension which taxpayers experience whenever the subjects of assessment and taxation are under consideration has usually been powerful enough to influence legislatures and prevent them from granting to individuals or boards supervising assessments sufficient power to accomplish results; and often, when sufficient authority for that purpose has been granted, it has been timidly and weakly administered. Reassessment of individual properties has been the extent of the practice in most states, and if from time to time a few districts have been entirely reassessed it has been done as a warning and not as part of any systematic reassessment program.

While unanimously declaring the proper remedy to be reassessment, our conferences have almost as unanimously declared the reassessment of a state to be impossible. The chairman of the round table at the Indianapolis conference, Mr. Charles A. Andrews, questioning a delegate, asked: "Is there

any central authority, any tax commission or board of equalization, which believes that it can within human ability and time reassess a state?" And Professor T. S. Adams in the same discussion declared "such a task impossible". I am confident that, when the results accomplished in Michigan have been presented, Mr. Andrews and Professor Adams will admit that there is *one* state where actual reassessment of all property has been prescribed by the lawmakers for remedying unequal taxation, and the necessary legislation for accomplishing it enacted; and where the results of reassessment are so strongly upheld by both taxpayers and assessing officers that all efforts to interfere with the carrying out of the reassessment program to absolute completion have been quickly and emphatically defeated.

I believe I can most profitably discuss the administration of reassessment statutes by briefly outlining what has been accomplished in Michigan and what our experience has shown to be most essential to such work. The taxation system of Michigan is a general property tax levied upon all property not specifically taxed or by law exempt. Classification of property and the application of different rates of taxation to different classes of property are prohibited by the constitution. That instrument provides a common basis for assessment, by requiring that all assessments shall be upon property at its "actual cash value". The general tax law defines "cash value" to be "the usual selling price of property to which the term is applied at the place where located at the time of the assessment, being the sum that can be obtained therefor at private sale and not at forced or auction sale." An assessment of all general property in the state liable to taxation must be made annually by the supervisors of the several townships and wards, or by some other assessing officer where provision is made for one. All general taxes are levied upon this annual assessment; but the apportionment of all other than local taxes to the assessing districts is not on the basis of assessed valuation, but of equalized valuation. Railroad, telegraph, telephone, and other public service corporations are also annually assessed at full cash value by the board of state tax commissioners and taxed by them at the average rate paid

by the general properties of the state, all such tax going into the primary school fund of the state. These constitutional and legislative requirements are supplemented by elaborate machinery for securing equality in assessments—an assessing officer and board of review elected by the voters of each assessing district, a board of supervisors to equalize between assessing districts of a county, a state board of equalization, of which the chairman of the state tax commission is ex-officio a member, to equalize between the counties of the state, a tax commission to ascertain and report to the state board of equalization the approximate cash value of each county.

From the viewpoint of one administering a general property tax, Michigan's tax system has been admirably framed for securing equality of burden in taxation; yet in the hands of 1,500 assessing officers, assessments everywhere departed from the constitutional basis of cash value, until in 1909 they varied from 30 per cent of cash value in one county to 80 per cent in another, with the 81 remaining counties fluctuating between these two extremes. While this condition was developing, Michigan had a tax commission. Established in 1899, it was one of the first of such bodies created by state authority. Its existence has been a stormy one. Through causes unnecessary to mention, it lost the confidence of the people, and its original powers were curtailed to such a degree that when the legislature of 1911 assembled it was, as far as power to supervise assessments was concerned, an impotent body, with authority to review individual assessments only on the written complaint of a taxpayer.

During the decade preceding 1911 an agitation for more equitable taxation had been in progress in Michigan, with the result that the system of taxing public utilities had been changed from specific taxation to ad valorem taxation, the assessment of the properties to be at actual cash value and the rate of taxation the average rate paid by the general properties of the state. The mining properties, also, had been given consideration, and in 1911 were examined and appraised for assessment purposes on a new method at actual cash value by a mining engineer of national reputation.

Prior to the agitation for more equitable taxation which re-

sulted in these important changes, the great majority of assessing officers had by common consent, as it were, ceased to follow the constitution and assess property at its cash value. This long continued practice was not abandoned when public utility properties were placed on the ad valorem basis and mining property assessed at the values reported by the expert appraiser, and there were many objections when demands were made for more just assessment of general properties. It was unreasonable, however, for those advocating equal taxation to take any other position than that all property should be assessed on the same basis. It was well known to members of the legislature, assessing officers, and taxpayers familiar with assessment conditions that because of under cash value assessment of general property the resulting average rate was a dishonest average rate when applied to public utility corporations, which justice demanded should be corrected. There was the feeling, also, that while the courts had sustained the ad valorem method of taxing public utilities as constitutional they had not sustained and probably would not sustain an average rate where the assessment of the properties on which it was based was admittedly under value. The assessment of public utilities could not lawfully be made on any other basis than actual cash value. The average rate must be determined from the assessed value, not the equalized value of the state. There was no way by which the situation could be remedied except by reform in the assessment itself, and the legislature of 1911 undertook such reform. The legislature of 1913 supplemented the work of the legislature of 1911 whenever the experience of the tax commission showed there was need for additional legislation.

The theory upon which the legislature proceeded was that conditions required the complete restoration of "actual cash value" in the assessment of all property; that equalization between assessing districts, however perfect, did not affect individual assessments and therefore would not bring about cash value assessments; that cash value could be brought about only through complete supervisory and corrective control over all assessments made by local assessors; that perfect equalization would also be secured through cash value assessments. The

machinery it was determined to use was the state tax commission, developed into a true supervising body, with power to review assessments either on complaint of a taxpayer or on its own initiative, and to review equalization on complaint of an assessing officer. The substance of the amendments to the tax laws made at that time is as follows:

“ It shall be the duty of the board of state tax commissioners:

“ To have and exercise general supervision over the supervisors and other assessing officers of this state, and to take such measures as will secure the enforcement of the provisions of this act to the end that all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

“ To confer with and advise assessing officers as to their duties under the general tax law and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations, and individuals failing to comply with the provisions of the general tax law; to prefer charges to the governor against assessing and taxing officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the attorney general or any prosecuting attorney in the state for assistance.

“To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, and to investigate the same and to take such proceedings as will correct the irregularity complained of, if any is found to exist.

“To inspect the various assessment rolls after they have been passed upon by the various boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection, and, in case it shall appear to said board after such investigation or be made to appear to said board by written complaint of any taxpayer that property has been omitted from the roll or improperly or unlawfully assessed, to hold reviews of such assessments, either individual or general, and to summon the assessor whose assessments are to be reviewed to appear with his assessment roll at the time and place named in the order and to determine and place upon the roll the true and lawful valuation of all property reviewed or omitted from the roll, such valuation not to be reduced for three years without written consent of the board of state tax commissioners.

“To investigate and pass upon appeals of supervisors or other assessing officers to the board of state tax commissioners charging unjust or improper equalization of county valuations by the board of supervisors and, in case such charge of unjust or improper equalization is sustained, to set aside the equalization complained of and to make a new equalization which shall be final and binding upon the board of supervisors and according to which state and county taxes shall be apportioned.”

Let me call attention to the wording of these amendments. They do not simply confer authority to do so and so, but they require the commission to do so and so; and, taken in connection with the section of the law which provides a heavy penalty for any commissioner knowingly assessing property at other than its cash value, they are certainly drastic. A timid man might think their enforcement would be the cause of a political upheaval, and when you have mastered the figures of the work accomplished under them you yourselves may wonder that it did not cause a revolution.

The amendments to the tax law we have been describing took effect in the summer of 1911, too late to do more that year than to formulate a system for doing the work and select examiners for the field work and school them in uniform methods. The real work began with the assessment season of 1912. The total assessment of the general properties of the state on January 1, 1912, was \$1,897,057,458; November 1, 1917, the total assessment of the same properties was \$4,022,507,720, an increase of \$2,125,450,262, or 112 per cent. During the same time many millions in assessments were taken from the roll, owing to changes in the laws whereby automobiles, bonds, mortgages, and all classes of secured debts now pay a specific tax instead of an ad valorem tax.

This increase is not entirely the result of reassessment. Some of it is for property that has come into existence or increased in value since the work began. For the purpose of indicating actual results, round number figures are given for a few counties, comparing the reassessment made by the tax commission with the assessment made by the local assessor the previous year.

<i>County</i>	<i>Assessment</i>	<i>Reassessment</i>	<i>Per cent of increase</i>
Iron	\$6,022,000	\$35,460,000	488.8
Gogebie	12,352,000	51,894,000	320.1
Sanilac	15,916,000	39,578,000	148.6
Marquette	26,481,000	64,447,000	143.4
Huron	15,129,000	36,552,000	141.6
Berrien	27,581,000	59,205,000	114.6
Monroe	21,062,000	42,397,000	101.3
Ingham	32,824,000	63,877,000	94.6
Delta	10,657,000	20,462,000	92.0

Kalamazoo	38,821,000	73,261,000	88.7
Wayne	753,979,000	1,427,000,000	89.4
Gratiot	16,521,000	31,273,000	89.3

In contrast with the above are:

Mackinac	\$5,950,000	\$8,759,000	47.2
Ottawa	26,100,000	38,327,000	46.8
Oakland	44,401,000	64,705,000	45.7
Lenawee	57,476,000	72,774,000	26.6
Antrim	7,079,000	8,934,000	26.2
Tuscola	26,589,000	30,397,000	14.3

Reassessment work has been completed in 70 of the 83 counties of the state, and of the 13 counties remaining eight are unimportant as to population and wealth. As a group, these remaining 13 counties are now assessed at 80 per cent of full value, with many districts at cash value. Plans for completing the work in these counties have been perfected and field work is under way; by the time the assessment season of 1918 is closed these remaining counties will have been reassessed. Today, according to the tax commission's estimate, the total assessment of the entire state is 96 per cent of the full value of property subject to assessment.

The weakest spot in every general property assessment is personal property. Michigan has recognized this by substituting a specific tax for ad valorem taxation on secured debts, and has extended it so as to include bonds of all kinds, even those of foreign governments. She has done the same with automobiles. Yet the proportion of the total personal property assessment to total assessment was in 1917 within one-tenth of one per cent as great as in 1912 and reached 20.6 per cent of the total assessment.

How has the board of state tax commissioners been supported by the people of the state while doing this work? The surest test of popular approval of administrative measures is the extent and readiness with which financial support is given. The "Michigan State Tax Commission", as it is popularly called, unlike most boards in the state has not at any time had a fixed appropriation. With the exception of the commissioners, the secretary, and chief clerk, whose salaries are fixed by statute, it can employ expert assistants, fix their compen-

sation and pay their expenses while at work from the general fund of the state with the consent of the board of auditors. The average number of experts and field men on the tax commission's pay roll under this arrangement for the period from January 1, 1912, to November 1, 1917, was 91, and the expenditure for their salaries and expenses for that period totals over \$830,000. It reached \$170,000 in one year. The total does not include office expenditures of any kind, even when incurred in connection with field work, nor the expense of annually revising the assessment of mining properties, information for which is collected and prepared for the tax commission by the state geologist and his assistants and the expense included in the accounts of that board. It may also be a slight indication of the view taken by the legislature of this work of reassessment that the salaries of the commissioners, their secretary, and chief clerk, have all been considerably increased during this period by act of the legislature, and practically every request of the commission for increased compensation for field men has been favorably considered by the controlling body, the state board of auditors.

What in legislation and practice has the experience of the commissioners indicated to be most necessary to successfully reassess a state? Unquestionably, of greatest importance is the character and extent of powers granted to the official or board responsible for the work. That official or board must be made a true supervising body, with authority, acting upon its own initiative, to review and correct any assessment made by local assessing officers and to place the corrected figures upon the assessment roll. In case general properties are taxed for both state and local purposes, authority must also be conferred to review equalization on the petition of an assessing officer. The most frequent objection urged by supervisors against making assessments at cash value is that if they do so they will be discriminated against in the county equalization and their districts compelled to pay an undue proportion of the state and county taxes. The knowledge that the right to appeal from equalization is given them is a powerful factor in preventing discrimination and in inducing assessing officers to place assessments at cash value.

Legislation should provide that valuations fixed at a review of assessments may not be reduced for a fixed period without the written consent of the supervising body, except where there is a change in the physical condition of the property. Experiences in Michigan in reviewing assessments before this amendment was passed show instances where for several successive years assessing officers ignored the valuations of the tax commission and restored their own valuations. It must be apparent to every one that without a legislative restriction upon the power of the local assessing officer to upset the work of the supervising body reassessment work might degenerate into a farce. Such legislation is necessary also to protect the supervisor against the attacks of unscrupulous persons who will endeavor to succeed him in office on a platform of reducing assessments. The authority of the local assessor should not be restricted in the assessment of new property, or in increasing valuations fixed at a review when such increase is justified, or in making reductions whenever there is a change in conditions, such as loss by fire or removal of natural resources. However, changes in conditions that allow a reduction without written consent should be physical and not business changes.

The supervising body should be authorized to assess as a unit all public utilities whose property extends into more than one assessing district, apportioning to each district its proper part of such valuation. The true value of such properties, especially where there is any intangible value, can only be determined by treating them as a unit, and that the local assessing officer cannot do.

Reassessment, except when necessary to correct some particularly glaring under or overvaluation, should not be undertaken at haphazard, but by political units, and should follow a systematic plan which will review at the same time every assessing district of the unit coming within the scope of the program outlined. It should examine and revalue all property in each district, even though such program extends over a series of years. No other method will give results satisfactory to the supervising body and taxpayers. To reassess a few individual properties seldom makes an assessment uniform,

nor will the basis upon which they are reassessed usually be followed by the supervisor in his assessment of the rest of the district, and so works an injustice to the owner of property reassessed. Equally harmful is it to make reassessments of a number of individual properties and from them determine a percentage basis for making a horizontal increase in the assessment of the remaining properties. Reassessments accomplished by such methods, while useful in reviewing equalization between assessing districts or counties, will not equalize between individual taxpayers, but simply accentuate the inequalities. The reassessment of a single assessing district of a political unit as a warning of what may happen to other districts not properly assessed is also, in my experience, equally futile and should be resorted to only in cases where examinations show that all the remaining districts are properly assessed.

Reassessment should be done by representatives of the supervising body and never by the local assessor, and the valuations determined after personal examination of all property in the districts reassessed; only by having the work done by the representatives of a supervising body can uniform methods of determining values be applied and results uniform with those obtained in other districts be insured. The local assessor almost invariably has not been schooled in proper methods of determining cash value. He is open to the suspicion of being influenced, consciously or unconsciously, by personal, political, or local considerations. He often finds it difficult to get correct information upon which to base valuations. The Michigan Tax Commission found hundreds of cases where individuals and corporations laughed at the efforts of local assessors, but did not hesitate to make correct disclosure to the representative of the tax commission. Only by having the work done by representatives of the supervising body can taxpayers be convinced that all are being treated alike. It is of the utmost importance that taxpayers shall have that feeling. An incident that occurred a few months ago illustrates its importance. During the reassessment of Wayne County an expert from the tax commission made an appraisal of the automobile plant of the Ford Motor Company, and when the

examiner reported the valuations he had determined to recommend to the state tax commission, they showed an increase of approximately \$30,000,000 over the local assessor's valuation. Mr. Ford, after glancing at them, asked, "Have we all been treated alike?" and on being assured that the same expert had appraised all the automobile factories of Detroit for the tax commission, he simply said, "Then it is all right; make us all pay taxes alike."

The entire expense of reassessment work that is part of a comprehensive state-wide program should be borne by the state. The conditions that are to be remedied will undoubtedly be found to be general, not local, and the reassessment is undertaken to reform, not to punish. I doubt very much if Michigan would have granted the necessary authority for state-wide reassessments, had the law required the expense to be borne by the county treasury. Departure from cash value, after it has once been established, is a different matter. It will be attempted by assessing districts but not by entire counties, for the purpose of gaining some advantage for that particular district. The expense of a reassessment under such conditions should certainly be borne by the offending district.

The supervising body administering reassessment statutes must not be a member of any committee or board that has to do with the levying or determining of any tax, and must not in any way be responsible for or have power to change the amount of taxes levied. Ability to make and substantiate the statement that the supervising body is in no way concerned with, or responsible for, the amount of taxes levied; that its work does not increase or decrease the aggregate taxation; that the sole purpose of reassessment is equalization of taxation, is one of the most determining factors in gaining support for the work. If reassessing power and taxing power are united in the same individuals it will be far more difficult to prevail upon legislative bodies to grant full supervisory powers, and extremely difficult to pacify taxpayers where there is both increase of taxation and increase of assessment.

A campaign of publicity and education must precede any extensive campaign of reassessment. Regardless of the favorable conditions under which the Michigan Board of State Tax

Commissioners undertook their work, growing out of the belief that cash value assessments of general properties had to be restored to harmonize with cash value assessments of public service corporations, I doubt very much if the reassessment of Michigan could have been accomplished had it not been for the campaign of publicity and education that was inaugurated the second year of the reassessment work. Taxpayers should be thoroughly informed as to the taxation system of the state, the necessity and benefit of full cash value assessments, the purposes of reassessment, what constitutes cash value, and how it is determined.

Point out that cash value is not merely the only legal basis of assessment but the most equitable one as well, and the one that can be most easily and correctly determined; that determining cash value requires but one judgment, whereas determining assessments on any other basis requires at least two judgments and doubles the possibility of error. Point out that assessments on any other basis than cash value always degenerate into a system of competition for low assessments, and that in such competition the man with the least influence and the district with the least influence invariably suffer in the long run. Point out that assessment by comparison, which is the usual method, is especially dangerous, inasmuch as an error in an assessment, whether resulting from poor judgment or from incomplete or inaccurate information, must continually recur in the assessment as long as the assessor is comparing one assessment with another; but if he determines each assessment on the basis of the cash value of the property, though he may make an error, it is not repeated in the next assessment. It automatically corrects itself.

Point out that in all departures from cash value it is the visible and easily valued property, such as the farm and the home, that suffers most. Such property is in plain sight and easily valued, whereas the commercial, industrial, and public service properties present a problem more difficult of solution by the average assessor and as to which he has difficulty in getting correct information.

Point out that the opportunity of the average taxpayer for comparing assessments and determining for himself whether

they are equitable or not is limited. The farmer can compare the assessment of his farm with that of his neighbors, the home owner can compare the assessment of his house with that of his neighbors, but neither go much farther. They cannot compare their assessments with the assessments of industrial, mercantile, or public service corporations. They cannot even compare their assessments with the assessments of taxpayers in adjoining assessing districts. The only safety the general taxpayer has against paying an unjust proportion of taxation is in actual reassessment of all property at cash value by competent examiners.

Most important of all, educate the taxpayer to the fact that increasing assessments does not increase the total taxation. Reassessment may result in changes in equalization, both between assessing districts and between individuals in the district, and thus change the distribution of taxation, but it will not change the total amount of taxation. If the total of all taxes is not increased, taxpayers as a body cannot suffer; and any increase paid by one section of the taxpayers reduces by an equal amount the total paid by the remaining taxpayers. It is often necessary to educate some of the taxpayers to the fact that the rate of taxation is not fixed and is not determined by boards or taxing bodies, but is the quotient obtained by dividing the total tax to be levied by the total assessment, and necessarily as the assessment increases the quotient—the tax rate—decreases. If you can absolutely establish in the minds of taxpayers that reassessment does not result in an increase of taxes, the question of the amount of the assessment will not worry the average man, unless he is one who has profited in the past through undervaluation.

The campaign of education should anticipate some of the objections to reassessment most frequently raised by taxpayers. The statement is frequently made that if the reassessment of all counties is not completed at the same time the counties where the work is completed will pay an undue proportion of the state tax. Answer it by showing that state taxes are apportioned to the counties not on their assessed value but on their equalized value, and it is the equalization, not the assessment, that can hurt them. If the body super-

vising the reassessment also supervises the equalization, it can protect the counties reassessed in equalization.

The criticism most frequently heard is: "How can strangers come into our town and tell us what our property is worth?" It should be repeatedly declared that examiners are not sent into an assessing district to tell the people what their property is worth, but to ascertain by investigation what the residents themselves think it is worth, and place it on the assessment roll on that basis.

The criticism that an increase in assessments means an increase in taxation is not always successfully answered even when its falsity is demonstrated mathematically. The counter-attack is: "That may be so, but the authorities will raise more money and soon restore the old rates of taxation." This seems to point out that reassessment laws, to receive the greatest degree of public support, should be supplemented by reasonable legislative restrictions on the tax levying authorities.

The declaration that reassessments can be more successfully made by employees of the supervising body, under their direct supervision, and at the expense of the state, necessarily implies that the employees doing the work must be high-class men, thoroughly schooled in the use of uniform methods for determining valuations. They are, when at work, the direct representatives of the supervising body. The average taxpayer sees little or nothing of tax commissioners and naturally will form his opinion as to the entire personality of the force and their ability and fitness for their duties from the impression made by the one representative with whom he has personal contact. The field force must be tactful, self-respecting men, impressed with the seriousness of their work and its importance to the individual taxpayer; they should dignify it by their actions and be able to demand from the taxpayer the same respect that would be given to the representatives of other departments of state government performing more congenial duties. They must in no case lose that respect by indiscretions in personal conduct.

The necessity of uniformity in methods employed by field men is equally imperative. Real estate does not often possess

a definite market value as do commodities. The determining of its true value must be largely an act of human judgment and men will always differ more or less in their judgments. They will differ less, however, if methods of determining values are uniform. Let the examiner, therefore, always remember that he is part of a machine and must reflect in his work the ideas and methods that are common to the machine. To insure this the field force as a body should be organized, officered, and disciplined, and required to participate at proper intervals in a school of instruction, at which all phases of reassessment work should be presented in papers prepared by members of the force and the conclusions arrived at discussed by the entire school. I think I cannot give a better statement of what should be demanded of field men than to repeat one paragraph from the regulations for field men formulated by the Michigan State Tax Commission.

“Remember that the commissioners are judged very largely by the acts of their representatives. You will be expected at all times to conduct yourself as a gentleman and never attempt to obtain information in other than a perfectly open and legitimate manner. Never misrepresent yourself. Always introduce yourself, state your business, and leave your business card for future identification. Violations of this rule will be adequate grounds for dismissal. Treat all information given you as confidential and not to be discussed with neighbors or others. Do not talk politics nor enter into arguments which have no relation to your business. We expect every employee to give to the state the same service he would if in the employ of private interests, and we ask you to assist us in conducting the affairs of the board of state tax commissioners in a business-like manner.”

The viewpoint of the supervising body will have much to do in determining the attitude of the general public toward them and their work. The Michigan Board of State Tax Commissioners is not ignorant of the weaknesses and injustices inherent in the general property tax system. They are studying tax problems such as the substitution of an income tax for personal property taxes, the extension of indirect taxation, the limitation of tax rates; and they plan at some future date to suggest to the legislature important changes in the tax system of the state. But during the campaign of reassessment they have not concerned themselves with theories of taxation

or attempted to interest taxpayers in any important changes. They recognize that the general property tax is the only system of taxation with which the taxpayers of the state are familiar, and to attempt to change it and at the same time reform the administration of it would confuse the taxpayer, destroy his confidence in the system itself, and his interest in administrative reform. This viewpoint of the commission has enabled it to concentrate the attention of taxpayers on the character and necessity of the reform it was accomplishing and to devote all its energies to that work.

The Michigan Board of State Tax Commissioners also early in the work of reassessment saw the absolute necessity of gaining and holding the confidence of all classes of taxpayers in the impartiality, uniformity, and correctness of its work. It could not expect gratitude, but it must have confidence and respect. It had before it as an object lesson the complete loss of public confidence suffered by the commission on every occasion when it had taken an active part in politics. It also realized that for employees to do their best work they must be free from the fear of loss of position or failure of promotion, because of the exigencies of partisan or factional politics. It therefore publicly proclaimed that the state tax commission was a business proposition only; that politics as a test of fitness for position had been eliminated; that every man must prove his fitness for his position and make that proof continuously; that all were free to hold whatever views in politics they might choose and yet aspire to the highest places on the field force; but if they wished to take an active part in politics they must resign from the tax commission. This position has not been departed from.

Almost as important as educating the taxpayer to the necessity and benefit of cash value assessment is gaining the co-operation and assistance of the local assessing officer for the work. This latter official is the person to whom the taxpayer naturally turns when anticipating a visit from the examiner making the reassessment; and should he be antagonistic the labors of the examiner will be rendered more difficult; but should he approve of the purpose of the work and indicate his confidence in the ability and fairness of the

examiner, the taxpayer will usually treat the examiner with courtesy and give him information readily. The assessing officer, though unwilling himself properly to assess his district, is often well posted as to values and able to give material assistance. It is often customary for tax commissioners, tax reformers, and supervising bodies to denounce the local assessing officers for undervaluations in assessment, regardless of the conditions under which they labor when attempting to make radical increases in local assessments. It is seldom that this official is schooled in uniform methods for valuing property, and he often has many properties in his district regarding which he has little knowledge and can get little information. Local assessors, also, are haunted by the fear that assessors of neighboring districts will continue to make low assessments and with them compete for a low equalization, and that the only way they can protect their constituents is by keeping assessments low. There is always someone, either in his own party or among his political opponents, ready to compete for the office on a platform of lowering assessments. The experiences of one year convinced the members of the Michigan Board of State Tax Commissioners that to condemn assessing officers under such conditions was not only unjust but was greatly increasing the difficulties of reassessment work, and that it should aim to gain their co-operation.

The Michigan legislature of 1913 instructed the state tax commission to exercise supervision over assessing officers and to confer with and advise them as to their duties. It also passed a law giving any supervisor who believed his district had been discriminated against in county equalization the right to appeal to the tax commission against such equalization. These two laws had been made the basis for a plan of co-operation between the local assessors and the tax commission. The attention of assessing officers was everywhere called to the reassessment work and they were reminded of their duties in connection therewith, but instead of criticism they were offered the assistance of experts for valuing industrial, mercantile, and public service corporations, and the services of the regular field force as instructors in the methods employed by the commission for valuing general property. Lit-

erature discussing cash value was furnished them, and a copy of the manual compiled for the use of the tax commission's field force. Representatives of the commission were sent to the various counties to discuss reassessment before the board of supervisors, and at those meetings protection against discrimination in state and county equalization was promised to supervisors who did their duty and reached cash value in their assessment.

The success of this plan of education, co-operation, and protection exceeded the most sanguine expectation of the board of state tax commissioners. Many counties, to be sure, did not respond at all and in others only a part actually reached cash value, but a number were placed on a cash value basis entirely through the work of the local assessor, supervised by the field men of the tax commission, and as large a sum as \$300,000,000 was added to the roll by local assessors in one year.

Suggestions as to the successful enforcement of reassessment statutes based upon experiences in Michigan would be incomplete without some reference to the methods used in their work. The commission early adopted the county as the unit in doing the work. It does not select districts in various counties and reassess them, but reviews every district not up to cash value in one county at the same time, although work on that plan may be going on in several counties simultaneously. The field force of the commission is graded as foremen, expert examiners appraising particular lines only, skilled examiners for valuing general properties, and field clerks who assist in gathering information and keep the record of the same.

When reassessment work is determined upon in any county some one is selected from the foremen who has had experience in valuing properties similar to those in the county to be reassessed. He is given charge of the work and is responsible only to the commissioners. A force of field examiners and field clerks are placed under him. Field clerks are necessary in cities where buildings must be visited, measurements taken, maps carried, and a large amount of information collected. The assessment officers of the county are visited, their co-operation solicited, and their assessment rolls taken charge of by the foreman. Meanwhile clerks prepare from the assessment rolls

field books on which are entered the legal description, location, and ownership of every piece of property in the assessing district, a full page generally being devoted to each property so as to allow abundant space for entering the information obtained by the examiner after personal investigation of the property. While the field books are being prepared, the foreman and examiner are studying conditions affecting values; transfers of property are compiled and the actual consideration for the same verified where possible; prices at which property is offered for sale are investigated; rents, leases, and insurance studied; and business men and taxpayers interviewed. As indicating how important this feature of the work is considered, a force of 30 examiners worked for six months in the city of Detroit collecting information before undertaking a single reassessment.

Field books completed and information gathered, the foreman assigns territory to each of the examiners under him, and field clerks where necessary. In his work the examiner must visit every piece of property on which he places a value, he must enter upon the field books a description of the same sufficiently complete to enable a commissioner at the final review to pass intelligently upon any appeal made from the valuation recommended by the examiners. He is also expected to interview the property owner himself, wherever that is possible, to verify the information obtained. In country districts the examiner enters on a separate sheet the character and value of personal property. In the cities, however, the valuing of this class of property is assigned to special examiners. If the supervisor is not hostile, he is conferred with whenever there is doubt in the minds of the examiner as to the value of a property or as to the correctness of information given. Especially important also is it that the examiners confer frequently with each other to insure uniformity in their work. If the district assessed is a commercial center, experts are sent to examine mercantile property, and other experts to do the same with regard to industrial and public utility property. It is advantageous not to send too many examiners into a county; the fewer the examiners the more frequently the foreman can review their work and the less danger there is of any departure from uniformity.

In the performance of his duties, the examiner is bound by rigid instructions. He must not act as a detective, he must not get information in any underhand way. He must be a gentleman under all conditions, no matter how annoying. He must present his card to every one he interviews. He must not shirk the examination of any property. Experience has shown that nothing influences a property owner to protest against the work of the examiner as much as does the feeling that the examination has been superficial.

On completion of the property examinations and their approval by the foreman, a public review is held. This review is the opportunity for convincing the taxpayer that all have been treated alike. It is not sufficient simply to publish notice of the review in the newspapers, but notices are mailed to every property owner. The review is generally opened with a talk by a commissioner, telling why the reassessment has been made, how it will affect taxpayers, what constitutes cash value and how it is determined; after which each taxpayer is given the opportunity to ascertain the assessment of his property and that of his neighbors, and in case he believes it assessed at more than its value, he is informed that he can appeal to the commissioners themselves, one of whom must be present at every review. After completing the review and passing upon the appeals made, the reassessment is placed upon the assessment roll, every roll having two columns for valuations fixed by state tax commission.

It is pleasing to the tax commissioners of Michigan and possibly may be reassuring to those contemplating reassessment work in other states to conclude this paper with a reference to the change in public sentiment and in the attitude of taxpayers and assessing officers that has come about as the work has progressed. In the beginning, the appearance of a representative of the commission in an assessing district for the avowed purpose of reviewing assessments aroused antagonism to the examiner personally and criticism of the tax commission as an arbitrary body roaming about the state and needlessly interfering with local conditions. Assessing officers, influenced by the feeling of their constituents, were afraid to co-operate with the examiner even to the extent of associating with him.

The first reviews were tumultuous affairs, devoted to denunciation of the commission more than to an investigation of the accuracy of its work. As the reassessment progressed and the plan of educating taxpayers and assessors was developed; as taxpayers discovered that in three cases out of four they actually profited financially out of reassessment; as reassessed counties discovered that they had been protected by the tax commission in state equalization; as knowledge that the work was to be state-wide and not limited to individual counties became general, sentiment changed. The individual taxpayer, educated as to cash value and convinced that all would be treated alike, lost his fear of an increase in taxation because of an increase in assessments. Supervisors changed their attitude and co-operated more and more with examiners in field work and sustained their valuations at reviews. The reviews themselves changed character and bitterness disappeared; counties that had not been reassessed began petitioning the tax commission to begin work in those counties, and boards of supervisors in numerous cases indicated their satisfaction with work done in their counties by passing resolutions commendatory of the commission, its field men and its work.

During 1917 assessments were reviewed in more than 150 districts. Personally, I do not recall a single disagreeable incident arising out of these reviews, and my associates have made the same report. The last unit completed was the county of Lenawee. Assessments were increased from \$57,000,000 to \$72,000,000 and the county board of supervisors responded with resolutions commending the commission. The township of Riga, a purely farming township with a population of less than 2,000, and an area of 22,000 acres, had its assessment increased over \$2,000,000—the average valuation per acre reaching \$150, with the assessment for buildings to be added. Nearly every taxpayer attended the review and learned his assessment and that of his neighbor, but not one appeal from the valuations recommended by field men was made to the commissioner holding the review.

Reassessment statutes have been successfully administered in the state of Michigan and the tax commission is still in existence, concerned only with completing its reassessment work, keeping it up-to-date, and making it more perfect.

HOW MAY REASSESSMENT STATUTES BE EFFECTIVELY ADMINISTERED WITHOUT CAUSING A POLITICAL UPHEAVAL?

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This question occurs to a sometime resident of a state admitted into the Union in 1848 and described in a geography published nine years earlier as "an extensive territory, generally level and in many parts very fertile, abounding in prairies and pine forests, inhabited by a number of Indian tribes, and being a fine region for hunters". Mention is made of these things to lend more prominence by contrast to the fact that in really early times the Pilgrims and Puritans and their descendants settled all questions of political upheavals because of taxation both by precept and by act, and this long before there was a great west to disturb vested interests. The Boston tea party and the Revolutionary War were the only upheavals of moment in the east.

Speaking for New Hampshire, we find in its first constitution, effective June 2, 1784, and copied largely from the Massachusetts constitution, which in turn was drafted by John Adams, the following article: "And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has heretofore been practiced, in order that such assessments may be made with equality, there shall be a valuation of the estates within the state taken anew once in every five years at least, and as much oftener as the general court may order." The same article, word for word, remains in the constitution now in force.

Assessment "in the manner that has heretofore been practiced", or the general property tax, has now prevailed in New England for two hundred and seventy-six years, as evidenced by an act or order of the general court of the Massachusetts Bay Colony in 1641, which was re-enacted by the Province of New Hampshire in 1679, when separated from Massachusetts,

and which to all intents and purposes is on the statute books today.

Among other matters the act of 1641 provided for a board of equalization: "And it is further ordered, that the commissioners for the several towns in every shire, shall yearly . . . assemble at their shire town and bring with them fairly written the just number of males listed, and the assessments of estates made in their several towns, . . . and shall duly and carefully examine all the said lists and assessments and shall correct and perfect the same." A quadrennial examination of the property in each county by the county commissioners is still required by statute for the purpose of equalization. (Pub. St. Ch. 27, sec. 19.)

Proportional assessment has always been recognized as the very foundation of the property tax, although while the property in the state consisted of real estate and tangible personalty fixed values for rating were prescribed by legislative action. This practice continued in New Hampshire until the act of 1833 directing the appraisal of all taxable property at "full and true value in money". Prior to that time there were slight changes in value, and undoubtedly the figures prescribed by the legislature fairly represented prevailing actual values.

State and county taxes have been apportioned among the towns by seemingly arbitrary acts of the legislature, but these acts were predicated on reports of committees appointed to receive and consider town inventories returned to them by the assessing officers. These committees added to or deducted from the assessed valuation for the purpose of equalization between the towns, and their reports became law by legislative enactment. This custom continued from the time there were but four settlements or towns — Portsmouth, Dover, Hampton, and Exeter—until 1878, when a board of equalization was created charged with the duty, among others, of really preparing an apportionment bill for presentation to the legislature.

When the board of equalization was abolished in 1911 its duties were transferred to the tax commission. Before then the towns returned to the board of equalization summaries of

their detailed inventories and the board was authorized to increase or decrease the total assessment of a town as evidence seemed to warrant, but such changes affected only the amount of state and county taxes and furnished no relief to individual taxpayers who were assessed too high or out of proportion to other assessments. This situation was not peculiar to New Hampshire, but obtained throughout the country, and was one cause for the propaganda looking to the separation of the sources of state and local revenues.

That each taxing district vied with its neighbors in undervaluation for the purpose of escaping some share of state and county taxes was so frankly admitted that the idea of removing this incentive and establishing home rule became very popular, and in some states, especially California, was put into effect. Before its operation proved more or less disappointing to its friends the fact that it did not reach the primary difficulty, i. e., local assessments, was attracting attention and discussion. Out of this agitation have come the several enactments giving to state tax commissions the power not only to supervise local assessments but to reassess individual parcels of property. Of course, the exercise of such power has met with opposition, for home rule is a most sacred fetish and is nowhere more respected than in New England, where township form of government was established even before the foot of the last Pilgrim pressed Plymouth Rock.

The word "reassessment" is not strange to eastern ears, which in part accounts for the comparatively little opposition encountered in the administration of later and more drastic laws. It is true that the term "full value" has been construed to mean two-thirds value; and people have been so accustomed to this valuation that the addition of the other third was somewhat of a shock, but not of sufficient violence to cause upheavals political or otherwise.

The constitution of New Hampshire is unique in that it permits the assessment of taxes on "persons and estates" without defining the persons and estates which may be taxed. Power and authority is granted to the legislature to specify the persons and estates to be taxed. The court says: "By the constitution, and the uniform practice under it, no property

can be taxed except such as is declared taxable by the legislature. Property not expressly subjected by statute to taxation is exempt. Much property has been and still is untaxed." This legislative power of selection may explain the fact that any evidence of unrest is found on the printed pages of the statute books.

Three special tax commissions only have sat in the state to consider the general subject of taxation. The first was appointed under a joint resolution of 1874, the second under an act of 1877, and the third under an act of 1907. The net results of the labor of these commissions of any importance, if they may be termed important, were the creation of the board of equalization in 1878, a cripple from birth, accompanied by a statute requiring individual inventory returns under oath; and the execution, burial, and resurrection in 1911 of the board of equalization under the name of state tax commission, naked at that time, but two years later clothed with power to reassess or cause the reassessment of any and all property in the state.

This power has been effective of much good, not so much from its direct exercise as from its mere existence. Perhaps six times in as many years it has been applied in isolated cases, but other than in these cases any changes in assessment have been brought about through the friendly co-operation of the tax commissioners, local assessors, and property owners.

The following figures are enlightening as to the accomplishment in this state since 1911; and in considering these figures it must be remembered that the population of the state is but 430,000, and the taxable property includes only real estate, live-stock over two years of age, vehicles, stock in trade of merchants and manufacturers, money and interest bearing credits in excess of indebtedness, and does not include the \$120,000,000 in savings banks.

The total assessed valuation has increased from \$250,802,886 to \$428,107,097; and the proportion of the increase has been 67 per cent on real estate and 85 per cent on personalty. Taxes have increased \$2,330,518, while the rate has fallen from two and one-tenth mills on the dollar to one and seventy-eight one-hundredth mills, but is now rapidly ascending, an

object lesson in favor of tax limitation laws. New property has come into existence in recent years, but by far the larger share of the increase is the result of honest endeavors on the part of assessors to appraise at full value.

At first skepticism was expressed over the avowed intention of the tax commission to enforce observance of the law. It was thought that their pronouncement was of the same order as the earlier pleadings of the powerless board of equalization. This doubt was manifest in the largest city in the state, the home of the chairman of the tax commission. It needed only his personal assurance that the commission was in earnest to convince the assessors that they must look into the future and forget the past. The assessors of this city are conscientious and able men; within one year the assessed valuation increased 40 per cent, the tax rate decreased 26 per cent, and today the valuation is double that of 1911; and, better still, the people look with favor on a 100 per cent valuation. In fact, in that particular locality at least, assessed values govern consideration of sales.

Naturally larger properties felt the change more directly. The many difficulties in determining accurately the value of large manufacturing establishments are obvious. Leniency had been shown because of the community benefits derived from them. These factors and others had produced undervaluation out of all proportion to the appraisal of smaller properties. The story of doubling and quadrupling the assessments of such properties is too long for this article, but it is sufficient to say that when the owners become convinced that all were being treated alike, without favoritism or fear, they ceased to complain and are now among the first to aid assessors with needed information.

The standard of attainment in the state now is appraisal at full value, and this standard is kept constantly before the eyes of assessors by consultations, correspondence, and frequent public meetings where the law and facts are freely discussed. The tax commission is in the way of obtaining data from all over the state. Without betrayal of confidence much of this may be furnished to local assessors. If, in particular cases, the latter are subject to home influence, ways can be

found to counteract such influence. If they wish to favor friends they can blame the tax commission for their inability so to do, and equally the commission stands between them and enemies they may wish to punish.

The answer to the question made the subject of this article is publicity, education, co-operation, and a just and moderate use of adequate powers to accomplish the purpose sought. Justice is not attained when the power alone is applied, as, for instance, ordering a flat increase of a fixed percentage covering a certain class of property or a certain taxing district. Manifestly such action accentuates rather than relieves local inequalities. Local assessors are human, and in the main superior to the average run of men. If their co-operation is sought they are willing to aid, while an attempt to drive will result in disaster. A tax commission to be of any use cannot sit on a raised dais, surrounded by all the panoply of the supreme court, and protected by rules of procedure which render them unapproachable to a person not dressed in wig and gown. I have heard of such commissioners but have never met one. Everyday intercourse mingled with some sense of humor will accomplish surprising results.

First of all, however, a campaign of publicity and education must be inaugurated to prepare the community for any changes in methods. A great number of people pay no attention to the subject of taxation until the tax collector appears, and are ignorant both of the law and of the basis on which taxes are computed. The statute enacted by the New Hampshire legislature in 1878, requiring each individual to return to the assessors a list under oath of his taxable property, early fell into the condition of noxious desuetude, and this condition was comforting to the owners of intangibles. The tax commission soon called attention to this statute and announced that it must be complied with while standing on the books. This notice was conducive to a rapid conversion of bonds and other interest bearing credits into stocks and non-taxable investments, relieved the owners from a 50 per cent income tax, and swept the state clean of bond salesmen. Whether this is for the best interest of the state is entirely another question, which must be answered by the people through a constitu-

tional convention and the legislature, but certain it is that as a whole they do return verified lists of their property and no effort has been made to repeal the statute.

This custom, coupled with an annual examination of property, more or less perfunctory in some instances, it is true, has made reassessments familiar in theory and in fact and partially accounts for the lack of demonstration when there was the radical change in assessments five years ago. I think that underlying it all is the spirit of fairness inherent in mankind, rendering each person willing to do his share in a general undertaking when he is satisfied that everyone else is doing the same; and when he finds that his neighbor's farm or other property is assessed on the same basis as his own there will be no complaint.

This article seems to be a better explanation for the absence of upheavals because of effective administration of reassessment statutes than an answer to the question as to how such statutes may be administered without dire explosions. An excuse for the seeming deviation is that practices in an old and conservative state are far different from those in a new state, where changes are sudden and violent; and prevalent conditions must necessarily be taken into consideration.

HOW MAY REASSESSMENT STATUTES BE ADMINISTERED WITHOUT CAUSING A POLITICAL UPHEAVAL?

SAMUEL LORD

Chairman Minnesota Tax Commission, St. Paul, Minnesota

I was greatly pleased by the exhaustive explanation of the methods pursued in the state of Michigan in making reassessments of property. I have known from the beginning that work along this line was being done in that state and have felt curious for a long time to know just what results had been obtained; it is extremely gratifying to me to know that they have been so good. We have had some experience in Minnesota in the matter of making reassessments. Just why the state of Minnesota has been called upon to explain how it is possible to make reassessments without creating a political revolution I am unable to state. Possibly it is because we have had no trouble along these lines. We have made in Minnesota in the last ten years something like 870 reassessments and I have yet to hear the first complaint from a single taxpayer or from any of the districts reassessed. All that we have heard in regard to the matter has been complimentary, and people generally have been satisfied that the reassessments were called for and that taxpayers generally have been benefited by them. Personally I have no doubt of it at all.

I should say, after listening to the interesting paper just read, that the Michigan law in regard to reassessments was copied very largely from the laws of Minnesota and Wisconsin because it sounded very familiar to me. The laws of Minnesota permit the tax commission upon its own initiative to appoint special assessors and have reassessments made in any county or in any taxing district in the state, and to have any property or any class of property in any district or in any county of the state reassessed. The law further provides that, whenever it is made to appear to the tax commission by verified complaint or by a resolution adopted by the legislature,

that property in any district has been undervalued or that any considerable amount of it has been omitted from the tax rolls, it shall be the duty of the commission to appoint a special assessor and have the property in the district reassessed. It is under these provisions that we have usually acted.

Perhaps it is necessary—I think it is—to give the conference a fairly clear idea of the taxing machinery of Minnesota, in order that you may fully understand just what we have accomplished in this direction and just why no complaint has ever been made about these reassessments. I apprehend that our machinery for making assessments differs very little from the taxing machinery in the state of Michigan. The initial assessment in Minnesota is made by a local assessor. We have approximately 2,500 of them in the state. When the assessments are completed, and upon a given day, these local assessors present their assessment books to local boards of review for correction and completion. In rural townships these boards are made up of three township supervisors, and in villages and cities they are made up of certain officials designated by law. It is made the duty of these local boards to review carefully the assessment returned by the assessor; to place upon the assessment books any omitted property that they may know of; to listen to complaints of taxpayers who may appear before them; and to make any corrections and additions that may be necessary to make the assessment comply with the laws of the state. After this work is completed the books are turned over to the county equalizing board.

This board is composed of the county commissioners and the auditor of each county. It is a board of six members, five county commissioners—each of whom represents an individual district in the county—and the county auditor acting ex-officio at large, and it is the duty of this board to equalize the assessment as between the towns in the county. The county board, in addition to the powers I have mentioned, also has power, by giving notice and an opportunity to be heard, to increase the assessment of any individual in the county, or to increase the assessment against any tract of real estate, and many boards make extensive use of this power. But generally the county boards confine themselves to increasing or decreasing the total

assessment against the different classes of real and personal property in the various districts of the county by percentage changes, so that when their work is completed the various districts are, supposedly, assessed on the basis provided by law. When the county board has finished its work, complete abstracts are made up and turned over to the tax commission, the state equalizing body, for final action.

The Minnesota tax commission is composed of three members and it is given very extensive powers in the matter of equalization. It not only has power to increase or decrease the total assessment of a county or a district, but it also has power to increase or decrease the assessment made against individuals, against different classes of property, and against tracts and parcels of real estate; and the commission makes very extensive use of these powers. Like the tax commissions of New York and Michigan we are great believers in Minnesota in the power of education. We are all believers in democracy, but we are greater believers in efficient democracy; and so we undertook to start right at the bottom to educate the public in regard to what their tax laws are, and just why it is necessary that an assessment shall be made according to law in order that every taxpayer in the community may have a square deal.

The greater part of our campaign of education is carried on just before and during the time the assessment is being made. Our next step is to call the assessors of each county together at the county seat at some date before the assessing work begins, generally during the months of March and April, for instruction in regard to their work. We visit all the counties at least once in two years and nearly all of them every year. At these meetings, as suggested by the gentleman from New York the other day, "we sit down with them and put our feet under the same table". We spend an entire day going over the laws, answering questions and solving difficulties. We explain to them as fully as we can in a single day how an assessment should be made; why it is necessary that it should be made according to law; how the law should be enforced; how taxpayers may be most easily approached; and endeavor to give them in a general way some idea of the value of the different types of property in the state as it appears to us.

Five years ago the total value of real and personal property assessed in the state of Minnesota was \$1,474,585,000. The law at that time required that all property should be assessed at its "full and true value in money" and, strange as it may seem, we have the identical definition of "full and true value" that has been read to you tonight by the gentleman from Michigan, indicating that Michigan borrowed her laws from New York, Wisconsin borrowed her laws from Michigan, and we inherited all of Wisconsin's laws when we were created a state. So we have this definition of "full and true value" invented by the law-makers of New York and passed along to us by Michigan and Wisconsin.

In 1913 the legislature of the state enacted a somewhat crude classified assessment law. It provided that iron ore should be assessed at 50 per cent of its full and true value in money; that household goods, wearing apparel and the things that go into the home should be assessed at 25 per cent of full and true value; that live-stock and merchandise and unplatted real estate should be assessed at $33\frac{1}{3}$ per cent of its full and true value; and that all other property should be assessed at 40 per cent. You can plainly see in this law the predominating strength of the farmers of Minnesota in legislation. Farm lands are assessed at $33\frac{1}{3}$ per cent of full value, while city and village real estate is assessed at 40 per cent. Nobody in the state, however, so far as I know, has ever seriously protested against this classification. We all realize that the farmer has no easy time and in very truth is the backbone of the state, and everybody seems willing that he should be favored in the matter of taxation.

This law was not the creation of the tax commission. Some features of it we thoroughly believe in, while others we believe to be both unscientific and unjust. But I can say truthfully that the enactment of this law was one of the greatest blessings in taxation that has happened in our state since it was taken into the Union. Prior to its enactment, because of a multitude of conflicting statutes, we were unable to enforce the then existing laws, which provided that all property should be assessed and taxed at its full and true value in money, but from the day the classified assessment law was

enacted till now we have been able to go forward and enforce our tax laws literally; and we believe at the present time we have an assessment in Minnesota made as nearly according to law as can be found in any state of the Union.

I said a moment ago that the year before this law took effect the assessed value of property subject to an ad valorem tax in Minnesota was \$1,474,585,000, and this, if the law had been followed, would also have been its true and full value. As the direct result of this classified assessment law and the campaigns of education which we have conducted, these figures have been increased in 1917 to approximately \$1,929,571,000. This does not include any railroad property; it does not include mortgages; it does not include the property of express or freight line companies; and it does not include the property of telephone companies. If these properties were included at the figures at which they have been valued by various officers in the state, the total value of property in Minnesota today would be in excess of \$5,200,000,000. We are very confident that these figures represent within from six to 10 per cent of the actual value of all property in the state, and we submit that we are pretty close to a legal basis. We recognize in Minnesota today no standard of value but the standard provided by law and we require assessors to value all property at its full and true value. The percentages of full and true value in the classified assessment law that I have endeavored to explain are used only to base the tax upon, so that some classes or types of property may be subjected to higher or lower taxes than other classes or types. The assessor first puts down the full and true value of any property that he is assessing and then in another column the percentage of full and true value provided by law.

But I have gone into details more than I intended to and am afraid that I have strayed some distance from the text. The outcome of the campaigns of education that we have waged during the past few years in Minnesota and that we are waging with increasing intensity every year is most gratifying. In fact, we feel that they are among our most useful activities and we are not permitting the work to lag for a single moment. Next year we will add features to the work

we never used before in order to get better and more complete assessments. Fortunately we have been able with the machinery that we have at hand to get assessments so nearly approximating the legal standard in a large majority of the assessment districts of the state that, when we order a reassessment in any district, we immediately have the unqualified approval of a large majority of the taxpayers of the county; so no matter how much an offending township may protest, or taxpayers may protest, as they never have done, we still have behind us a large majority of the taxpayers of the county who fully understand that we are doing it for their benefit and to the end that the offending district may be placed upon a basis of equality with the districts that have been properly assessed.

We are not supplied with the lavish fund that the Michigan commission is given to pay the expenses of reassessments. We have a very limited fund for that purpose. The legislature sets aside each year a revolving fund of about \$7,500 with which to pay for all the reassessments that we may make in a single year. This year we will make about 120 reassessments, most of them for "moneys and credits". We take this type of property because it is the type that is the least accurately assessed. And we make these reassessments as much to stimulate the assessors to do better work in the future as we do to equalize the burden of taxation. We do it largely for the purpose of convincing assessors that when we tell them that indifferent and inaccurate work will result in reassessments we mean just what we say. We have discovered that a reassessment of money and credits affects the work all along the line. We find where a reassessment of money and credits is made in any district that in the following year not only will the assessment of such property be improved but we are almost sure to find a very great improvement in the assessment of all other kinds of property. It seems to wake the man up and infuse him with new life and to make a really better assessor out of him.

One of the things that ought always to be borne in mind in making reassessments is this: never order one unless you feel reasonably sure that a reassessment is required and will be

justified by results. It is an unfortunate thing if you reassess a town and it turns out that the reassessment is no better than the old one. Out of 870 odd reassessments that we have ordered we have probably had 20 or 25 where the special assessor has fallen down, and the result has been that it has taken several years to get that district back on the map again and to get an assessor to do good work there. So we know it is very important that you do not fall down in this work. You must be sure first that the reassessment is required and you should be equally sure that you get the right kind of man to do the work.

I want to give you something of an idea of the way we select our special assessors. We are unable to employ a force of trained and highly capable men to make reassessments as they do in Michigan. Our appropriation would not permit that, desirable as it may be, so we have resorted to this method. When we have decided to reassess a township we take up the list of assessors of the county in which the district is located and we pick from this list the assessor who has apparently done the most capable work during a period of three or four years last past, and in nearly every case where we have selected special assessors in this way the outcome has been most satisfactory. It is a compliment to the man; he feels flattered by the appointment and the result is that he goes over into the neighboring town determined to show that the commission has made no mistake, and in 99 cases out of 100 he turns in a first-class reassessment. We are generally able to get an old assessor and a good assessor in a neighboring township in the same county to do this kind of work at a very much smaller wage than we could possibly obtain an expert such as our friends in Michigan employ. I do not say that it is not desirable to employ outside experts to do work of this kind; on the contrary, our experience along this line has been very satisfactory, but I really believe it creates less friction to have some man in the same county make the reassessment than it does to employ an outsider. We advertise the fact that in choosing special assessors we will select the assessor in the county who has done the best work and that if he declines to act we will offer the job to the next best, and so continue, if

necessary, until the list of competent men is exhausted. This method robs the selection of all political significance. We do not inquire whether the man is a Democrat, a Republican, or what he is. We do not care. The only thing we are concerned about is whether the man is upright and competent to do good work.

I think it is by following these methods that we have succeeded in making this large number of reassessments without creating any political revolution. We know that there are many districts in the state that might well have been reassessed that we have passed up, but we go as far as we can with the funds at our disposal. We pick out a poor township in this county and another in that, reaching out if necessary to all parts of the state and picking out, of course, the districts where the poorest work has been done. The assessors throughout the state have finally come to understand that when we say a township is poorly assessed, or that property has been omitted, or anything else of that kind, and that a reassessment will certainly be made if better work is not done in the future that we mean exactly what we say, and they also know that when reassessments are made we almost invariably find them with the goods on them. Men after all are very much alike, and assessors have come to regard a reassessment as a disgrace and the result has been a great uplift in the assessment work throughout the state. We do another thing that they do in Michigan. We aid the assessors in every way we can in making the assessment of types of property that it is difficult for them to value, such as light, heat, and power companies and other public service corporations. We give them all the help we can.

In the matter of real estate assessments I will have to differ with my friend from Utah as to the value of sales cards. This may be diverging just a little from the theme we are discussing and yet it has much to do with it just the same.

If in ordering a reassessment of real estate you are basing your actions on nothing more substantial than a mere opinion or a guess and your judgment is challenged you are likely to find yourself on very thin ice. It is very desirable in ordering a reassessment that you have something substantial on

which to plant your feet and our experience, covering a period of nearly ten years, indicates conclusively, we think, that the sales method of determining real estate values is the best method ever devised. It has been criticized at times; no one claims for it that it is perfect; but so far as we know not a single critic has suggested an improvement or pointed out a better or a fairer way.

Briefly stated, the "sales method" as used in Minnesota consists in obtaining from each county in the state data showing all the bona fide transfers of real estate made during the period of four years next preceding a real estate assessment, together with the true consideration paid for each tract transferred and the last assessment for taxation purposes against each tract. Having these data it is an easy matter to determine the ratio of assessed to selling value. The method is founded upon the proposition that nothing else so fairly measures the true value of real estate, or anything else for that matter, as the price actually obtained for it in a normal transaction. It is by all odds the best measure of value that our commission has been able to find. It is the result of the coming together of many minds, representing sellers and buyers, upon the most important business transactions that take place in the community. It is universally recognized by courts as the best evidence of value and in the final analysis is the basis of nearly all so-called expert opinion on such matters.

Like many other good things, we borrowed the sales method of determining real estate values very largely from Wisconsin. The first year we used the sales method to equalize real estate values in our state we found it necessary to increase the assessment in some counties as much as 50 or 60 per cent. Of course, that came pretty near starting a revolution and the result was that when we notified the officials of the county that an increase in the real estate was contemplated of 50 or 60 per cent we were visited by delegations on the day set for the hearing of sometimes as high as 60 or 70 representative men from the county. In most cases they came down with their hair standing straight up and ready to annihilate the commission. We met them good-naturedly and explained to

them fully how we had come to the conclusion that real estate in their county should be increased; they would usually pooh-pooh our data and claim that most of the sales represented trades or transactions of one kind or another in which the right considerations were not shown. As a wind-up to the discussion we would say to them: "Gentlemen, here are the cards covering the transfers we have taken in your county. They represent in each case the consideration as we understand it to be; we know that the assessed value is correct. Now we would like to have you appoint a committee of three, take these cards, and spend a day or two going over them, throw out every card where you feel the consideration is wrong; and you men certainly ought to know on the spot whether it is right or wrong."

Invariably they accepted our invitation and appointed a committee. They would spend a couple of days going over the cards and weeding out all of them they did not regard as showing the true consideration. After a careful and somewhat prejudiced scrutiny of the cards they sometimes threw out 25 or 30 of them and would return them to us with a manifest feeling that what they had done would make a great change in the percentage of assessed to true value. We would put the cards on the machine and figure them up, and we have yet to find a single county in which this careful and critical weeding out process has resulted in a change of more than five per cent, and in most cases the change was less than one per cent. The result has been that in every case these delegations have gone home convinced that we were right. As stated a little while ago, the first year we used this method for determining real estate values we had delegation after delegation coming in from all parts of the state and protesting against it and being educated in just the same way. I am certain that I am well within the truth when I say that last year when we equalized the real estate assessment there were less than 50 taxpayers from the entire state who appeared before the commission to protest against a contemplated increase, so well satisfied were they that this method was the proper method of determining the value of real estate.

With that kind of data to back us up, when we find that a

community is way out of line and ought in fairness to other districts to be reassessed, and we appoint a special assessor to reassess it, we hear very little complaint either from the district itself or from the rest of the county. Everybody recognizes that we have done the thing that ought to be done. In many cases where we have reassessed townships for real estate the special assessor has done his work without seeing our data and without knowing anything about what they would reveal in regard to value, and has brought in an assessment that came within two or three per cent of being exactly what our cards indicated it should be. This shows that competent men can go out and value property and value it accurately.

I will conclude by saying that, based on our experience, if you can be reasonably sure that a reassessment is needed in any community and you can get a competent man to do the work, you can order it without the least fear of starting a revolution.

DISCUSSION

CHAIRMAN NILS P. HAUGEN: The question as stated on the program is how reassessment statutes may be administered without causing a political upheaval. We have in Wisconsin a law, enacted in 1905, authorizing the tax commission upon proper complaint made to order a reassessment of all the taxable property of a district if the commission be of the opinion, after a summary hearing, that the original assessment is not in substantial compliance with law and that the interest of the public will be promoted by a reassessment. We have operated under that law for a number of years. At the time of the meeting of the conference in Buffalo my colleague, Mr. Thomas E. Lyons, spoke on the subject of this reassessment statute and I shall not dwell upon the constitutional features of the law any further than to say that it has been fully sustained by our supreme court in two cases where the constitutional question was raised. As I understand it, our law is a little different from the law in regard to reassessments of property in Minnesota, in Michigan, in Kansas, and I believe in some of the other states. With us we have to order a reassessment of all the taxable property of the district and we have not thought that we were authorized and probably could not be authorized under the constitutional provisions in our state to go into a district and revalue specific properties.

While there has been some disturbance caused in some districts because of reassessment, still I would hardly confess that there has been any political upheaval on that account. There certainly has not been anything that extended beyond the immediate district in question, but there has been a great deal of opposition created in some districts. In other districts, however, the reassessment statute has worked, as we believe, to very good purpose. We have secured much better assessments throughout the state in a general way than we had before the tax commission possessed this authority to go in and reassess a district. There was something said the other

day about the authority on the part of the legislature to authorize legislation of this kind. That point we have passed. Under the law as it stood until last year we ordered an informal hearing and if it appeared that the grievances were sufficiently important we ordered a reassessment of all the taxable property in the district and appointed an assessor to do the work that was formerly done by the local assessor and a board of review to review his assessment.

The great benefit of the statute was not confined to the district immediately interested. We obtained much better results in the entire county where we made an example of a district that was very badly assessed. And not only that; we obtained through this power to reassess districts compromises so that the district itself—and that is true in several quite important cities in the state—was willing upon our advice to hire a man to make a reassessment who was fully competent and who had the approval of the tax commission, and put him at the work themselves and pay him out of the local treasury.

Of course, the matter of costs of making a reassessment was one feature that was taken advantage of by those who opposed the exercise of that power by the tax commission. The law was so changed during the last session of the legislature that it now requires owners representing 10 per cent of the assessed property of the district before the tax commission can proceed; but even under that law we have made several reassessments. It is, however, an act that works in favor of large landowning companies. Frequently they are the parties who ought to have reassessments because the local settler discriminates against them. In many cases such companies own 10 per cent of the property in the sparsely settled portion of the state and there is no difficulty on their part in getting a reassessment, while the property owner of a small parcel of property would be helpless except, of course, as he would have recourse to the courts; but that is expensive and the amount involved would not be sufficient as a rule to warrant the expense.

The tax commission felt a year ago that it could avoid the necessity of making a reassessment in many cases if our assessment laws were changed in such a manner as to secure better

assessors in the first instance, and with that in view we recommended to the legislature that the annual assessment of property as we have had it in Wisconsin and have it now should be abandoned, that the assessment of real estate once in four years would be sufficient, with a readjustment of properties where there was any material change since the assessment was made, and that could be taken care of by the board of review; also that the matter of assessments be placed in the hands of a county official. There is always a tendency on the part of some local assessors to undervalue property because they have not got entirely away from the idea that full value assessment means more taxes.

We all know that in making the state assessment and in county equalization the local assessor's valuations are not followed. I do not know of a single county in the state of Wisconsin where the county board in making the county equalization has taken the valuation as fixed upon the property by the local assessors, either before the tax commission was in existence or since. There has always been a readjustment between districts and under our law at present if the readjustment as made by the county board is not satisfactory, appeal is taken to the tax commission and we review the action of the county board. The law has always been that property should be assessed at full or true value, and that applies not only to the local assessor, but the county board in fixing valuations on the different assessment districts in the county has been required as far back as I can remember to place the taxable property in each assessment district at its full value, and the tax commission is required, and the state board of assessment before the existence of the tax commission was also required, to place the valuation of each county at the true or full value of the property in that county.

We recommended that the matter of assessments should be placed in the hands of a county assessor, setting forth that an assessment once in four years would be fully adequate to meet the requirements of a better assessment. I believe as one of the commissioners—and we all agree on the subject—that we would get a higher class of officials in the county than we get now in the local assessment district. It is not always a ques-

tion as to the ability of the man to make a good assessment, but, as stated here yesterday, a man who is sufficiently competent to make a good assessment frequently will purposely violate the law and undervalue property. We accompanied our recommendation that an assessment be made once in four years with this provision, that the assessor be elected by the county board, and that he should be selected under civil service rules, because we feel that if the county board were confined to three candidates submitted to it by the civil service commission of the state we would not go very far astray. We have had admirable results in the public service under the civil service law; in the city of Milwaukee the assessors are appointed under civil service rules. Some of them have been in the service for eighteen or twenty years, and they have made remarkably good assessments of property, and very equal assessments in the city of Milwaukee. And because it has been tried out in that city, and elsewhere, we feel warranted in our opinion that if these officials were chosen in that manner, although they would be appointed by the county board, frequently composed of local men engaged in politics and having political ambitions, we would still expect very good results in the selection of candidates. That would be our method of getting away from the disturbance that is caused occasionally by the reassessment of the property of the district by order of the tax commission.

There is a pretty strong feeling in favor of local self-government throughout the state, especially in the farming communities. We received our theory of local government from the eastern states, from the New England states, from New York. We were a part of the territory of Michigan, and Michigan inherited these laws, with their good and bad features, from New York and Massachusetts. We accepted the laws as they were in the state of Michigan when the territory of Wisconsin was organized, and we turned over the same methods of local regulation and local self-government to the state of Minnesota when Minnesota was cut off from Wisconsin, I believe; so that is at the foundation of Mr. Lord's local self-government, too, although Minnesota has got farther away from it than Wisconsin has. But I am of the opinion

that, if we had the same authority to value specific properties that the commissions have in Michigan and in Minnesota, the work could be done much more smoothly, with far less friction than where we are required to go into a town or city or village and reassess all the taxable property. That is what has caused the most friction with us, although I should say that the effect of having that power has been very good indeed.

The provision of the constitution in the state of Wisconsin relative to the function of local tax assessors is identical with that of the constitution of the state of New York. In other words, it was taken from the constitution of the state of New York; yet in the state of Wisconsin the supreme court a few years ago in the Daniels case confirmed the constitutionality of the reassessment law. The supreme court sustained the power to reassess, holding that we were simply appointing an agency to correct the errors made by the local officials.

We are much indebted to Mr. Barnes for the very illuminating discussion he has given us and the account of the reassessments in the state of Michigan. I am afraid that most of us would not feel we had the authority to enter upon any such exhaustive examination as they are conducting in Michigan. At any rate we have not the appropriations under which we could make such examination of the properties throughout the entire state.

The experience we have had in Wisconsin with reference to the state assessment made by the tax commission is entirely in line with what Mr. Lord says their experience has been in Minnesota. For more than ten years we have not had a county delegation appear before us to try to get us to change the valuation of a county. We did the first few years that we used the sales cards, but that complaint has entirely disappeared.

MR. ROBERT B. MCINTYRE, of New York: I am more interested in these papers than in anything else that has been discussed here because the city of New York, like many other large municipalities throughout the states, is often discriminated against in the apportionment of direct state taxes, based upon fanciful equalizations. What I am concerned about in Michigan is whether the home rule section of the state

constitution reserves to the local community the function of taxation. Have you not a constitutional provision similar to that of New York? If so, has your reassessment law been tested as to its constitutionality?

MR. ORLANDO F. BARNES, of Michigan: It has been tested a number of times.

MR. ROBERT B. MCINTYRE: So positive was the advice of the New York tax lawyers when I came back from Madison, Wisconsin, two years ago, that a reassessment law would not be constitutional in the state of New York, that we took the matter to the constitutional convention then about to be called, and tried to procure an amendment. We found that the representatives to the constitutional convention were influenced pretty much by the same considerations as were the members of the legislature, and we did not get the amendment to the constitution. But if the constitutional provision in Wisconsin—and I know it is exactly the same as that of New York—and if that in Michigan is the same as in New York, I think it is about time somebody induced our state tax commission to try out the possibility of making a reassessment.

MR. JOHN T. AMEY, of New Hampshire: In addition to what Judge Fellows has stated so well in his paper, I wish to say that the reassessment feature of our New Hampshire law has been used sparingly. The fact that we have the power to reassess, which is very similar to the power given in the Wisconsin law, carries great force and is of material assistance to us in enforcing the full and true value feature of the law.

The New Hampshire commission started out in 1912 with a firm determination to enforce the tax laws of the state. The few reassessments which we have ordered have served the double purpose of correcting the assessment of the particular property involved and of furnishing sufficient notice to all local assessing boards that all taxable property within the state must be properly assessed in compliance with our statute, or reassessment would be ordered.

We have had but little difficulty in administering what we believe to be a very good law.

MR. C. P. LINK, of Colorado: I would just like to touch upon mining assessments. That question has not been discussed at this meeting at length. Incidentally it has been touched by some of these papers, but we have in this conference a representative from one of the western states where for the first time in the history of the West precious metal mining is fairly assessed. I refer to Arizona, and C. M. Zander is present. I would like to ask if Mr. Zander will give us a brief explanation of the advance made in metal mine assessment.

MR. C. M. ZANDER, of Arizona: Possibly a number of you remember a previous appearance when I had something to say about mine assessments. I do not know that the conference up to that time ever heard much about mine assessments, but evidently the conference was jarred so severely that it was given a new impetus, because upon my arrival here this time I find the largest conference in the history of the National Tax Association. There has been a great deal said about other states and Arizona deems the privilege a great one to be given any attention at all whatever in a body of this kind, because of its infancy and because of its small size. But we claim the distinction in one respect—of having done something.

While we copied from some eastern states, we have blazed the way for the western states with respect to the assessment of producing mines in the semi-precious metals. I think the conference is very familiar with the early history of our troubles in Arizona with the assessment of this class of property up until the passage of a special mine tax bill which provided that mines should be assessed at four times their net, plus one-eighth of their gross, plus the value of their personal property. We have had several political revolutions in Arizona since the passage of that bill, a number of volcanic eruptions, and the tax commission has been the burning center of several of those eruptions; but nevertheless we are still here on earth.

The special law to which I have reference was passed over the strenuous opposition of the tax commission and the only satisfaction the commission got in the passage of the law was

to insert in a more or less surreptitious manner a provision that it was to expire some time or other, namely, within two years. After the expiration of that law the commission proceeded under the provisions of its general powers, which, so far as the tax commission of Arizona is concerned, are unlimited. If there are any restrictions anywhere in any of the states upon the functions of the tax commission, they have been removed in Arizona. We looked for all of them in order to eliminate all of them. In addition to that the tax commission has unlimited appropriation. "There is hereby appropriated out of the general fund of the state of Arizona a sum sufficient to carry out the provisions of this act!" Of this, I am a firm advocate, and I would say to all of these people who are crying out in the wilderness for help that the first thing for you to do is to create a tax commission and endow it with omnipotence, omnipresence, and opulence, and then all these other things will be added unto you.

After the expiration of this special statute, the tax commission got down to real business on the assessment of mining property. By the way, this law did not die dead without an effort. The legislature following the one passing the law gave up its entire time at the regular session endeavoring to revivify that law. In fact, there was nothing done in this session of the legislature, not even the passage of the appropriation bill, and the whole sixty days were frittered away and fought out bitterly over this one question of a special mine tax law; the session finally adjourned without doing a single thing.

There has been a great deal said about taking the tax commission out of politics. I have nothing to say on the pros and cons of that, but I want to say so far as Arizona is concerned that the chairman of the tax commission of Arizona at one o'clock of the last night of the regular session stood behind the leader of the house and said to him, "Sam, this session should adjourn now." Sam said, "All right, we will adjourn it." He made the motion and the speaker of the house, in great confusion—everybody rising to make a motion or to make some speech, or to accept a compromise offered by the senate, which included the passage of this mine tax bill—did not put the motion. The chairman of the state tax commission, who

is not supposed to have a thing to do with politics at all in Arizona, tapped the gentleman on the shoulder: "Sam, this legislature must adjourn." He said, "All right, we will adjourn it." He made the motion and the same proceeding took place. The committee from the senate was on its way to the house to make another compromise. The chairman of the state tax commission, who never did have anything to do with politics in Arizona, said: "Sam, adjourn this legislature now!" "All right, we will adjourn it." So he said: "Mr. Speaker, this is the third time I have made the motion to adjourn this legislature; you have failed heretofore to put the question; now you are going to put the motion." And he got up, he walked down the aisle, and stepped up to the chair—a window opened out onto the ground below—then he said: "Mr. Speaker, you will put this motion immediately or you will go out that window." And the speaker said, "Gentlemen, the motion has been put and seconded that this house stands adjourned sine die; all those in favor of the motion make it known by saying aye." Aye!—and it was carried. The special mine tax bill was dead and Arizona was then delivered so that it could lead the way for all the western states in making the mining companies pay the same tax that other property pays in the West. Of course, they sometimes say that the tax commission of Arizona is a little prejudiced against the mines but they have got over that by this time; and now the mining companies are supporting the tax commission and all those things are forgotten.

We went ahead and did this. We classified mines; all the copper properties that gave no indication of waning we practically put in one class, and those properties that did show an indication of waning we put in another class. The gold properties were put in another class; and the zinc, lead, and other precious metals we put in still another class. The copper properties of the major class were capitalized on net earnings at 15 per cent, which was the equivalent of multiplying their net earnings by six and two-thirds. This 15 per cent which we allowed the companies to earn had these parts in it—eight per cent earning upon the investment, which is the general rate of earning allowed in Arizona, and the other

seven per cent to take care of the wasting asset or the replacement of the investment by the time the mine had been exhausted, the depreciation and obsolescence of the machinery, and improvements, and the risk in the game. In this calculation, after capitalizing the net earnings, we then considered that we had taken into the equation every single thing that made that mine valuable, including, of course, all the reduction works and the machinery; and everything else was included in that calculation which contributed towards the value of the property. Just to digress, the statute provides that the machinery and all improvements and reduction works should be assessed by the local assessor, so that it is necessary for the commission, after finding the value of the total property, to subtract the local assessment from that total valuation, leaving then a figure which the tax commission certifies to the county boards of supervisors to be placed on the mines themselves.

Before the tax commission valued the mines the first time they were assessed at about \$19,000,000. The assessment this year on the mining property of Arizona was \$370,000,000. We assessed one mine for \$79,000,000. We only had two years production on it or we would probably have made it \$125,000,000.

The reason that the other western states do not find any valuation on mining property is largely due to the restrictions in the constitutions, which provide that the net earnings of the mine shall be taken as the full cash value of the mine, and after finding the net earnings of a mine the general state rate applies to that valuation; and it is well-nigh impossible to amend the constitutions in those states. But I think every western state now is busily engaged in endeavoring to discover some way to find an equitable assessment on mining property.

CHAIRMAN HAUGEN: In capitalizing net earnings you take net earnings of a single year?

MR. C. M. ZANDER: No, we do not; we learned something from Michigan on that question. By the way, the American Mining Congress held a session in Phoenix at one time and Michigan sent a delegate to that congress who was the assessor

of mines in Michigan, the state geologist, and he talked very plainly to the organization; and from him at that time we learned that Michigan used the past performances of the mines, taking five years of the past performances of the mine to indicate what might be considered future performances. Arizona now takes an average of the five years' net to find a fair net on any mining property. We have no trouble in getting that net. We have a form that requires information showing all the operations of the mines, all their expense, all their expenditures of every kind and nature, and then requires this report of the net that they show to us to harmonize with their own balance sheets, so that with respect to finding the net of the mining companies we have no trouble.

There is a question now that I would like to ask the states of Wisconsin, Michigan, and Minnesota, as those states assess mines practically the same as Arizona, in that they find the value of the mine as reflected by the performances of the mine. The excess profits tax of the federal government will take a very large per cent of the earnings of these mining companies. I would like to ask those states and other states similarly situated or affected whether or not they have thought about the question as to how that is going to affect their assessments in their states.

MR. WILLIAM BAILEY, of Utah: I should like to ask Mr. Zander a question: first, what is the amount to be deducted from the gross yield to determine the net; and, second, what process did the chairman of the state board of equalization use in hypnotizing the legislature?

MR. C. M. ZANDER: As to the first question, we allow every item of expense necessary for the operation of the property.

MR. WILLIAM BAILEY: Including taxes?

MR. C. M. ZANDER: Yes, taxes.

MR. WILLIAM BAILEY: Depreciation?

MR. C. M. ZANDER: No, we do not allow depreciation in the returns because, as I stated, the large factor of capitalization, 15 per cent, will take care of all depreciation and the return of the capital invested in the property, the risk, and obsolescence of machinery. As to the hypnotism—

MR. WILLIAM BAILEY: All western legislatures cannot be handled that way.

MR. C. M. ZANDER: That raises another question. You know the commission in Arizona is elective. I do not know that I can defend it, but I know this much, that the tax commission in Arizona knows every baby in that state.

MR. OSCAR LESER, of Maryland: Is not the man who did the hypnotizing in fact the governor of Arizona?

MR. C. M. ZANDER: No, that is not a fact.

MR. OSCAR LESER: What has happened to him?

MR. C. M. ZANDER: You will have to be more specific. Arizona is a state that requires two governors; we are expecting a telegram any time which will give us the supreme court findings as to whether or not we shall have one. However, there has been no governor who used any particular hypnotism. There is a governor down there who has been the head and front of a political machine which from the inception of the tax reform in Arizona has been able to keep itself intact and stay on the job long enough to see that the people are used and accustomed to this reform, which has now become a fixture. Further than that I would not care to make any statement because it might be construed as somewhat partisan, and I am certainly not partisan!

MR. J. T. HALE, of Minnesota: I do not know that I can answer Mr. Zander's question to his satisfaction or to my own satisfaction. We have a comparatively easy problem in fixing the values of the iron mines in Minnesota. As to the main

portion of these mines, the determination of the actual amount of tonnage is comparatively easy; and in our estimation of the value we have had before us the actual tonnage in the case of most mines, some single deposits running up to very many million tons of iron ore, as high as 50,000,000 tons possibly. The Great Mesabi Range, since its discovery in 1890, has been thoroughly explored or, as we say, drilled. The formation is almost flat with a covering of earth over it. Sometimes the ore comes practically to the surface of the ground, and in the deepest places on the Mesabi Range it may be 200 feet beneath the surface of the ground.

Take a deposit covering possibly a 40 acre tract; that tract has probably been drilled by drill holes 200 feet apart. From these drill holes we measure the tonnage. These drills bring up the slewage. If it is hard the diamond drill takes out a core, so we get the type of ore from the surface to the rock below. These cores are assayed, as well as the slewage. Every five feet is assayed. We get the average assay of all the holes and from that we get the average assay of the whole deposit—the units of iron as we call it. That is, if it is 60 per cent iron there are 60 units of iron. We determine the amount of phosphorus, which is an element that reduces the value of the ore; and so from the assays we get the value of the ore in the market.

We have the market value of that ore delivered at Lake Erie ports. We get the sale value there from the market reports. That value is also fixed by the furnace companies who buy it so that the tonnage and the value of each ton of ore are determined. The hardest part of our problem, of course, is to determine the taxable value. From the sale price of the ore at Lake Erie ports we deduct the cost of transporting it from the mine and also the cost of mining.

To answer Mr. Zander's question more specifically, we allow the taxes; so far they have been our own state taxes, estimating about what the tax would be on one ton of ore as it is taken out. The final result after making these deductions, and other similar ones, is the value of each ton of ore in the ground in that particular mine. Take it in the case of 50,000,000 tons in one mine; suppose 1,000,000 tons are taken out

in a year, the 1,000,000 tons taken out fifty years from now will not be worth as much as the 1,000,000 tons taken out this year and taken to market. No man is going to pay, on the value we have figured, for that 1,000,000 tons that he will not be able to sell until fifty years from today, so we discount that value and get the present worth of the whole amount. Thus we arrive at the present worth of all that tonnage in the ground; and, of course, you who are familiar with figuring out problems of arriving at present worth, for instance of a note for \$1,000,000 due in fifty years from today, without any interest, will not be surprised at the result. If you figure that out, it comes down to a comparatively small amount of money. Then, under our classified assessment law, we take 50 per cent of the present worth of the ore in the ground and that is the amount upon which the tax is figured.

Again, to refer to Mr. Zander's question, I say we do allow the taxes because anybody in buying that property would figure the taxes as part of the operating expenses of that mine. I think you have heard here that our basis of value is defined by our law, which says it is the amount that one man who wants to buy will pay to another who wants to sell. So a man will not buy that property without making all these deductions; the taxes, transportation, mining, and everything of that kind. I think that answers the question. As to what we do today: we have not as yet taken into consideration this new tax, this federal tax, which, of course, will probably reduce the value of the property to a purchaser.

MR. ORLANDO F. BARNES: I believe that we will not allow that factor to be considered, at least not very extensively, in determining the value of the ore in the ground. Value per ton is one of the five factors the Michigan method uses. If we reduced the value per ton of the ore it would apply to ore that cannot be taken out for twenty years yet as well as to ore mined the past year; therefore, if we use it at all it will be to a very limited extent. In determining the value of the ore we allow the annual tax to be considered as an operating expense. We would not, I think, allow the tax to which you refer.

MR. C. M. ZANDER: Then you have changed your method there in the last few years. I understood in your state you used the stock quotations to some extent.

MR. ORLANDO F. BARNES: Not on iron mines.

MR. C. M. ZANDER: How about copper?

MR. ORLANDO F. BARNES: In valuing the copper mines we have not interfered with their method because we have appraised them twice and in each case found that their local valuations founded on stock quotations were satisfactory to the local people, and higher than we could make them by other methods.

MR. C. M. ZANDER: That would not be the case now, would it?

MR. ORLANDO F. BARNES: That may be true, but stock quotations reflect the increased value just as much as anything else.

MR. C. M. ZANDER: I understand the quotation of coppers was cut down 50 per cent of what they are worth when the excess profits went on.

MR. ORLANDO F. BARNES: We shall not take up mine assessments until next spring. I do not think there will be any reduction in copper mine assessments.

MR. A. E. HOLCOMB, of New York: There are a few things I wish to submit for publication in the volume of proceedings of this conference. For instance, a letter I have received from Mr. Galloway of Oregon. After struggling for many years, they have finally reached their goal. He says in his letter:

“Yes, Oregon has at last adopted a wide-open tax classification amendment. We finally persuaded the legislative assembly to refer the propo-

sition to the people once more, with little hope of success—just a matter of taking a long chance. We planned for the proposition to go to the people at the regular election in November, 1918, but a special election was called for June 4, 1917, chiefly for the purpose of disposing of a measure to bond the state for good roads. The tax amendment and several other propositions went to vote at the same time. The campaign both for and against the amendment was very mild compared with those of former years. A very light vote was cast and, somewhat to our surprise, the tax amendment was adopted, 62,118 to 53,245. I am inclosing a copy of House Joint Resolution No. 16 which shows the text of both the new and the old constitutional provisions.”

The text of the new provision is as follows:

“No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax. The legislative assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the state.”

An extract from a letter from a county assessor in Alabama reads:

“A question, please. Would it be feasible to assess household goods at a certain per cent of the assessed value of the house in which the furniture is used?

“If such a method is feasible, what per cent should be used in the calculation?

“Do you know of any literature bearing on this point?

“Could, or would you suggest any other feasible way to assess household furniture when personal inspection is impracticable?”

In an address before the Ohio Academy of Social Sciences, April 6, 1917 (published in the *Ohio State University Bulletin* for May, 1917, Vol. XXI, 27, p. 11), Professor Edwin S. Todd remarked:

“As most of you know, the National Tax Association is an association of theorists and practical tax administrators in the United States and Canada which has as its chief aim the scientific study of taxation systems; and which through the aid of annual conferences made up of members of state and local tax commissions, tax assessors, local and state officials, and economists, has sought to bring about a more scientific tax system as well as uniformity in taxation measures among the states. In its ten

years of existence it has accomplished a vast deal in bringing order out of taxation chaos in this country. A closer relationship between the colleges and this association would be of great and mutual benefit. On the one hand, the college instructor may be of service to those members of the National Tax Association who are concerned with actual tax administration in the various states and communities of the country. Here is another way in which the college teacher may make a place of influence for himself. Experience has demonstrated how many administrators are glad to have the help of the so-called theorist. I have been surprised at how easy it is to get into friendly and sympathetic contact with men in many of the states who are trying to solve the problems of tax administration. On the other hand, the National Tax Association will be of immense benefit to the instructors in that, through it, they may have first-hand and exact knowledge of the difficulties met in taxation matters throughout the country and the methods proposed for overcoming those difficulties. The National Tax Association is a great national clearing house of information on taxation matters that no one interested in the public welfare can ignore. It would be well if each social science group in Ohio colleges could have a membership in this national organization."

I have received from H. S. Baldensperger, of Columbia University, secretary of the National Committee on Prisons and Prison Labor, a pamphlet entitled "Dollars in City Dumps", which describes a new source of municipal revenue arising from the sale of waste material discarded by the city offices. This waste is collected and assorted by the prison inmates and sold to junk dealers at a sum far in advance of the amount previously received. The collateral saving is also a large item. The plan has proven most satisfactory in Chicago, under the direction of John L. Whitman, superintendent of the Chicago House of Correction.

A plan to secure federal revenue from a federal license and commercial tax is advocated by D. O. Haynes, publisher of *Drug and Chemical Markets*, and appears in the issue of that magazine for May 2, 1917.

Usually, as you know, I have tried to put on the program of the National Tax Association conference some quotation which will give us a reminder of the past. In studying the *Federalist* to find something appropriate to the present situation, I came across two things. One appears on the program cover and the other, which illustrates the farsightedness of Hamilton and his keen appreciation of the important questions arising in connection with war finance, is this:

"Taxes are never welcome to a community. They seldom fail to excite uneasy sensations, more or less extensive. Hence, a too strong propensity in the governments of nations to anticipate and mortgage the resources of posterity, rather than encounter the inconveniences of an increase of taxes.

"But this policy, when not dictated by *very peculiar circumstances*, is of the worst kind. Its obvious tendency is, by enhancing the permanent burthens of the people, to produce lasting distress, and its natural issue is in national bankruptcy.

"It will be happy if the councils of this country, sanctioned by the voice of an enlightened community, shall be able to pursue a different course."

From communication by Hamilton, Secretary of the Treasury,
to the House of Representatives, March 16, 1792.

REPORT OF COMMITTEE ON RESOLUTIONS

MR. CARL C. PLEHN, of California: The committee on resolutions presents the following resolutions:

Resolved, That a committee be appointed to investigate and report on the constituent elements in land values for purposes of taxation.

[Resolution voted.]

Resolved, That this conference commend the *Bulletin* published by the National Tax Association and express its appreciation of the services rendered by Professor Fairchild and the editorial board.

[Resolution voted.]

Recognizing with gratitude the obligations of the conference to many individuals and associations who have contributed to the success of this conference and to the pleasure and comfort of the members, we desire to express our thanks by formal resolutions: Therefore be it

Resolved, That we extend our sincere thanks to the following organizations and persons, namely:

To the governor of the state of Georgia for his hearty co-operation in extending invitations to the delegates, and his helpful interest in the work of the conference; also for the reception which the governor and Mrs. Dorsey extended to the members of the conference.

To the members of the reception committee, to the chairman, Mr. Frederick J. Paxson, president of the Atlanta Convention Bureau, and especially to Mr. Fred Houser, secretary of that bureau, for constant and effective services on behalf of this conference;

To Mayor Asa G. Candler, of Atlanta;

To State Tax Commissioner John C. Hart;

To the Ladies Reception Committee;

To the citizens of the city of Atlanta; and of the state of Georgia generally;

To the management of the Piedmont Hotel for very cordial efforts towards the comfort and needs of the conference and for extending special facilities for the meeting and the accommodation of the officers;

To Rev. M. Ashby Jones for his patriotic address;

To the Associated Press, and the press of Atlanta for their interest and co-operation.

[Resolution voted.]

NINTH SESSION

FRIDAY MORNING, NOVEMBER 16, 1917

CHAIRMAN—WILLIAM BAILEY, UTAH

1. PRESIDENTIAL ADDRESS

Samuel T. Howe, Chairman Kansas Tax Commission
and President National Tax Association, Topeka,
Kansas

2. SOME RESULTS OF A SURVEY OF THE OPERATION OF THE GEN-
ERAL PROPERTY TAX IN AUSTIN, TEXAS

E. T. Miller, Professor of Economics, University of
Texas, Austin, Texas

3. THE SINGLE TAX LIMITED IN WAR TIME

Robert Murray Haig, Assistant Professor of Economics,
Columbia University, New York City

4. TAX LEGISLATION OF 1917

C. C. Williamson, Municipal Reference Librarian, New
York City

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PRESIDENTIAL ADDRESS

SAMUEL T. HOWE

President National Tax Association and Chairman Kansas
Tax Commission, Topeka, Kansas

No discourse on a particular tax problem has been prepared as a presidential address on this occasion; instead there are presented some thoughts relating chiefly to the need of a more extensive education of public opinion and to the desirability of country-wide uniform tax laws.

The many able addresses delivered on the program topics and the oral discussion of several of them at the round table undoubtedly have enlightened many of us, if not all, and have broadened our views. It is the special privilege of this association to assemble annually a large number of persons of varying professions and callings who have expert knowledge with respect to the particular phase of taxation they have severally chosen to investigate. Great pains are taken in the preparation of the program to have able and sagacious discussion of some of the many problems which need solution, and which at present unsolved and in combination make the just placing of the tax burden probably the most complex of civic questions. One who consults the record contained in the 10 published volumes of the proceedings of the association and of the conference which the association annually assembles will not fail to observe that almost every conceivable tax proposition has had the careful consideration of one or more earnest and experienced investigators.

The result of the work of the association has been a nation-wide awakening to the necessity of reform in the fiscal methods of most, if not all, of the states; and in many of them very decided changes for the better have been brought about through influences arising by reason of the work of the association. The volumes of proceedings taken together present the most authoritative assemblage of essays upon taxation that can be found anywhere in one collection. The record discloses dis-

cordant views, of course; and probably the greatest problem of all is to spread in an influential way the agreed thought of modern students upon fundamentals among the people of the whole country so extensively as to secure from the legislatures of all the states the changes in present law required to produce a uniform code, with particular reference to all those phases of taxation which under present conditions affect unjustly an indefinite number of the taxpayers of any given state who have property interests in one or more other states.

It must be apparent that as yet not enough of those who should be actively interested in the promotion of uniform laws have become united in opinion with respect to basic propositions upon which equitable taxation among the citizens of all the states considered collectively must be founded in order to make the movement for interstate uniformity a compelling one so far as law-making bodies are concerned. The thought naturally comes that legislation should follow the course that is pointed out by the unified thought of the greater number of earnest disinterested students of the subject and of experienced tax law administrators who know full well the injustice of many present systems, and of economists whose conclusions, resulting from prolonged and exceptionally intelligent investigation of social problems, undoubtedly qualify them above all others to suggest methods which will new-form present institutions in ways that will benefit the public. The opinions of these classes of investigators are becoming more and more impressed upon the legislation of the country and upon the administration of law; and probably never before were their efforts so influential and so productive of good results among the states as at present. Slowly but surely more equity in taxation is being realized, but it ought to come faster and will when the public generally shall get proper information concerning the problems yet unsolved.

Unless the constituent and law-making powers can be moved to take the action necessary to open the way for needed reforms, large numbers of citizens now carrying unjust burdens must continue to bear them. In a few of the states during the past decade there has been legislation which cleared the way for laying the burden among the people of those states in a

manner relatively more equal than was possible under the discarded systems, but in much the greater number of states extreme conservatism has thus far barred the way to this public advantage. Critics are in substantial agreement on the proposition that, in a state which has in its constitution the hard-and-fast uniformity clause which limits the action of the legislature and prevents it from intelligently legislating for the public good, there can be no relief until the constitution is amended. Generally the initiative to such amendments lies with the legislature: and until that body gives the electorate an opportunity to pass upon needed changes there can be no removal of the constitutional embargo upon just legislation. A small number of states now have this legislative freedom and it scarcely needs be said that these states could not be prevailed upon to assume the position occupied by the hard-and-fast-bound other states; hence, there can be no tax comity among all the states until all legislatures shall have the privilege of legislating freely upon the subject. It is not necessary to suggest in detail what the influences are that impress extreme irresolution and inertness upon many legislatures when they are asked to exercise their powers of initiative for the public good.

An officer who has been in the public service long enough to enable him to ascertain the effect upon the people of the rigid enforcement of some present statutes, and upon whom is imposed the duty of pointing out in a formal report to the governor and to the legislature the defects of law, and to make suggestions as to how they may be remedied, will soon meet with discouragement in the endeavor to benefit the public by the discharge of the duty thus placed. Experience teaches that the average legislator is but an instrument in the hands of the small number of influential members who organize for the purpose of leading and controlling in the enactment of laws. It has been many times demonstrated that carefully prepared official reports which clearly point out defects in the law and suggest remedies, and which are prepared in printed form and distributed among the newly elected members of the legislature a sufficient length of time in advance of the legislative session to enable them to gain some knowledge

of the questions that will be presented, are rarely even read previous to the session; and, after the session begins, with the multitude of transactions that inevitably result, little time is afforded to investigate questions raised by official reports. The consequence is that in the haphazard transactions of legislative business a measure carefully prepared and designed to reform some clearly unjust provision of the statute is not understood by the greater number, and usually it requires but little active effort on the part of those adversely interested to defeat measure after measure that as law would undoubtedly prove beneficial to the community at large.

One of the most difficult present day legislative problems is rooted in the conflict between the interests of the people as a whole and the supposed adverse interests of individual citizens; and the selfishly inspired activity of the latter before the legislature is too often more influential than are attempts to secure laws to benefit the community. Among the obstacles in the way of right legislation is the powerful influence of the lobby. It is not contended here that bars should be put up against efforts directed to the education and enlightenment of members of the legislature who come to the session lacking a proper knowledge of many questions which are subjects of proposed laws; only such influences are decried as are intended to subordinate the public interest to individual interests. Any sort of outside influence that makes for a full understanding on the part of members of the legislature of the different interests affected by proposed legislation should be welcomed, but it hardly need be said here that too many times lobby influence in opposition to the public interest is effective in defeating many just measures. The approach of the lobby is so insidious, centering from many directions upon its object, and its efforts are veiled by such an appearance of candor and ingenuousness that even the most wary sometimes unsuspectingly yield.

It is commonplace but relevant to say here that the power of government is primarily with the people and that whenever there is a call by an influential number of them for legislation of a particular kind the legislature will usually accede to the demand, but there can be no inspiration of the kind unless the

public interest is aroused, and unfortunately as to the tax question there is much apathy among the people. Many of them feel that they are carrying unjust burdens; but they rarely organize for the purpose of reforming tax laws in a just manner. They content themselves with complaining loudly at taxpaying time and then resume their normal sluggish condition until the next like occasion. There will be always possibility and too often probability of the right kind of legislation being defeated until there shall be such an education of public opinion with regard to changes in laws needed to advance public justice as will render the influence of anti-public interest lobbies of no avail.

At each of the two last national tax conferences the question received attention, and at the Indianapolis conference in 1916 the committee of this association on educational work, appointed upon the recommendation of the San Francisco conference in 1915, treated the subject in detail and very effectively; and attention is directed to the report of the committee, delivered by its chairman, Douglas Sutherland, which may be found at pages 305 *et seq.* of the tenth volume of the proceedings of the association. The report of the committee was wide in scope and suggested many channels through which efforts tending to popular education might be directed. Activity in many ways on the part of the association was suggested, which would undoubtedly produce good results, but at present only part of the recommendations can be followed because of the inability of the association to finance some of the desirable movements, which must necessarily remain for future action.

In this connection the attention of the members of the association and of the conference is called to a very interesting and instructive address before the Ohio Academy of Social Sciences, on April 6th last, by Professor Edwin S. Todd, of the Miami University at Oxford, Ohio. The address seems to have been prepared with particular reference to the situation in Ohio, but what was said is just as relevant to the situation in nearly all the other states. Primarily the essay of Professor Todd was an appeal to the members of the Social Science Section of the Ohio College Association to become interested in the problems of tax reform in Ohio, and in that connection

strong reasons were given why teachers of social science should become interested in those problems. This able paper cannot be discussed here at length. The most that can be done is to restate in the language of the essayist the conclusions reached by him, as follows:

1. That each college represented, if at all feasible, shall give some attention to the study of taxation;
2. That each college, through its economics department, get into closer touch with the National Tax Association;
3. That this group of social science men seek to stimulate interest in the study of taxation through the offer of appropriate prizes;
4. That this group, through the leadership of Ohio State University and with the co-operation of the governor and the state tax commission, call a conference on taxation;
5. That this conference shall be the beginning of annual or biennial conferences whose representative committees shall work among local organizations for the intelligent study of taxation problems;
6. That colleges represented here get into and keep in close touch with such local committees and such local organizations as shall be formed for taxation education purposes.

The fact that the subject was taken up and so carefully considered on that occasion is evidence that the importance of bringing a larger knowledge to the people generally concerning matters of tax reform is receiving more and more careful attention.

It will undoubtedly become necessary to have organizations in the various states in order to disseminate proper knowledge, and it is important that all who have an interest in bringing about needed changes in law shall co-operate in the work to the fullest extent possible. Among the matters which must be brought to public attention as an educative proposition is the fact that many present day bad results of taxation cannot be prevented or even mitigated except by the attainment of some degree of state comity, and in this regard the National Tax Conference held in 1916 at Indianapolis adopted a resolution recommending that a committee be appointed by this association to draft and report to some later conference of the association a model tax law which might serve as a guide in the promotion of uniform legislation. This recommendation was

observed and the following persons were named by your president as the members of the committee :

Chas. J. Bullock, of Harvard University, *chairman*
Thos. S. Adams, Yale University
Chas. V. Galloway, Member of the tax commission of Oregon
Celsus P. Link, Member of the tax commission of Colorado
Samuel Lord, Member of the tax commission of Minnesota
Ogden L. Mills, State senator of New York
Thos. W. Page, University of Virginia
A. C. Rearick, of New York City
W. L. Tarbet, of Chicago, Illinois

It is no easy task that has been given to the committee, but all the members are earnest students of the question and are qualified by ability and experience to do well the duty assigned them, and it is expected that within a reasonable time the association will have reported to it a model law which, if enacted by a substantial number of the legislatures of the states, will produce in large degree the needed uniformity and will eliminate many of the grounds for complaint that now arise because of conflicting laws. In the nature of things, full accordance in respect of all tax laws cannot be realized. The antecedents, the traditions, and the institutions of a given state will inevitably differentiate its fiscal system more or less from those of other states, but there can be achieved, as above suggested, such uniformity as will largely abate the evils that now exist because of manifold jurisdictions assumed over identical properties diversified as to kind and as to economic characteristics.

The members of this body know, of course, that some of the efforts of the association for tax reform are exerted directly and others indirectly. Directly (1) by transmitting through the mails original documents or re-prints thereof, of such importance as to be of interest to those upon the mailing list; (2) by publishing and transmitting to the members of the association the annual proceedings of the association and of the conference; and (3) by the circulation of the *Bulletin* of the association. Indirectly its efforts bear fruit through the agency of the conference. It is the conference that promulgates agreed conclusions, and since the first association and

conference meetings the rule has been consistently observed to publish no conclusion upon a tax proposition unless agreed to by resolution adopted by the conference with substantial unanimity. This custom has been followed in order that the conference, which alone has the voting power with regard to the statement of conclusions, may open the way to a free discussion by the respective advocates of particular phases of the general subject. That great good has resulted from the work of these two bodies already has been affirmed.

Because of the neutral attitude of the association and the conference as to questions about which there are conflicting opinions, it long has been thought by some that another channel should be opened through which a majority opinion of an assemblage recognized by executives and legislatures of the states as authoritative could exert a more direct influence upon legislatures in procuring uniform laws. The first active movement in the direction of calling such an organization into existence took place in the legislature of California in January of the present year. Resolutions were adopted by that body and approved by the executive of the state suggesting that all the states be called in a congress to be composed of delegates appointed as might be provided by the legislatures. Inspired by this initiative on the part of California, like action was taken by the legislatures of other states, and, while the legislatures of some states for one reason or another failed to take part in the movement, the executives of those states in response to an invitation from Governor William D. Stephens, of California, have shown a willingness to earnestly co-operate.

The proposition primarily responsible for the movement was that some method should be devised whereby the domain of federal taxation on the one hand and of the states collectively on the other hand might be clearly defined, and perhaps the first action taken by legislatures as embodied in resolutions adopted might be technically considered as not being broad enough to cover an attempt to reconcile conflicting interests among the states; but be this as it may, the movement inaugurated by California has resulted, as you now know, in the creation of a Congress of States, the organization meeting of which for obvious reasons was fixed contemporaneously with

the meeting of this association and the conference. It is expected that in after years when the congress shall have a wider recognition by state legislatures and shall be able to proceed upon lines designed to remove so far as is possible the conflicting interests of states among themselves and between them as a body, on the one hand, and the federal government, on the other hand, the work of the congress will be far-reaching for good. Mention of it is made here for the purpose of emphasizing the proposition that there can be no conflict of interest between the congress and this association and its annual conference; and it is to be hoped that the association and the conference by united action at this meeting will resolve in an appropriate manner to give to the congress all the help that is found to be expedient in the way of making the work of that body effective in accomplishing its aims and purposes. The executive staff of the association has co-operated with the California authorities in arranging for the congress so far as appeared necessary.

The conference of 1916 by resolution also recommended the appointment of other committees, and the memberships thereof have been named as follows:

Inheritance Tax Committee

John S. Chambers, Sacramento, California, *chairman*
John E. Brindley, Ames, Iowa
Nils P. Haugen, Madison, Wisconsin
Joseph W. Matthews, Concord, New Hampshire
Thomas W. Sims, Montgomery, Alabama

Public Expenditures Committee

Herbert J. Hagerman, New Mexico, *chairman*
Thomas S. Adams, New Haven, Connecticut
E. B. Howard, Oklahoma City, Oklahoma
Adam Shortt, Ottawa, Canada
E. H. Wolcott, Indianapolis, Indiana

Places on the program for the making of the reports of the three committees were assigned in advance of the reservation for this address and you have heard the reports. It was not expected that either committee would produce a final report at this session, but would be able to report some degree of progress. The capability of all three com-

mittees is such as to indicate that in due time there will be presented to the association and the conference the best thought upon the subjects assigned to them for treatment.

Something has been said above as to the inability of the association to finance some of the movements recommended by the committee on education in its report at Indianapolis and thereafter recognized appropriately by resolutions adopted by the Indianapolis conference. This afternoon you will hear the reports of the secretary and the treasurer and will become advised that the treasury is in good condition, viewed from the standpoint of a body that is not very active in expensive exploitation of its purposes.

It is thought that this address will not be properly closed without some reference being made to the active work of the secretary and the treasurer. The importance of the work of the secretary has been indicated to you by the *Bulletin* of the association. It need not be here said that the *Bulletin* is an exceedingly useful serial to those interested in questions of taxation and that the splendid management of it by the secretary, and especially his editorship thereof, deserve the highest words of commendation. As to the treasurer, perhaps only the other members of the executive staff know of his indefatigable efforts to promote the interests of the association and to augment the fund in the treasury. It is no disparagement of any other member of the staff to say that to the treasurer should be given the credit for the very satisfactory condition of the treasury. He should be helped in increasing the fund by receipts from many added members of the association, and there really should be some action outlined which will produce among the present members who are located in various states such an activity in procuring new members as will enable the treasury fund to be increased sufficiently to justify the taking up of some of the movements which have been suggested toward popular education, but which cannot be done without proper financing. An earnest appeal is now made to all members to aid in this work and to endeavor to report to the treasurer names of new members.

In conclusion, it is hoped that it will not be considered inappropriate if the retiring president expresses his personal

views upon a policy which he believes if followed will benefit the association. The constitution provides that three of the nine elective members of the executive committee shall retire annually and shall not be eligible to immediate re-election. It is further provided that the officers shall be eligible to re-election, and in line with this permitted policy the first president, the honored founder of the association (as was desirable and to be expected) was several times re-elected and probably would have been chosen to that position so long as he consented to serve, but the time came when he decided to retire. His successor was twice chosen, as also was the present incumbent. The second election of the present officer was against his inclination, as was well known to many present at the session of 1916, for at that time he held to the view now expressed that it will better serve the interests of the association if the offices of president and vice-president are filled annually with new material. If the association will treat the office of vice-president as a stepping-stone to that of president, there will always be assurance of a president who is in touch with the policies and the work of the association.

As to the secretary and the treasurer, however, it is conceived that the interests of the association will be best promoted by retaining the present officers so long as they can be prevailed upon to discharge the onerous duties of their respective positions. The work of the president is not light, but it is negligible in comparison with the work of the secretary and the treasurer, and so long as the association can be served by the present incumbents it certainly seems wise that they should be retained. Needless to say what is here remarked is entirely without the previous knowledge of the secretary and the treasurer.

It is an exceptionally great honor to be chosen president of this distinguished and important organization, and the distinction should be enjoyed by as many as in the nature of things is possible.

SOME RESULTS OF A SURVEY OF THE OPERATION OF THE GENERAL PROPERTY TAX IN AUSTIN, TEXAS

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This paper is mainly the result of the work of the members of the Applied Economics Club of the University of Texas during the session of 1916-1917. This club is composed of the honor students in economics, and each year it chooses for investigation a subject in the field of applied economics, which work is done under the supervision of one of the faculty members of the school of economics. The work done by the club is an example of practical studies in the field of taxation which may be made by students in our colleges and universities.

The method of conducting this investigation was to assign to each member a topic in connection with the tax system of the city of Austin, and the statistics were obtained by a personal examination of the original inventories or assessment lists of the taxpayers. There were in 1916 approximately 6,307 assessment lists, and each student went to the office of the city assessor and collector in the city hall and thumbed these lists. Aside from the value of the statistics gathered, this work had the benefit to the students of robbing them of the fearsomeness of a tax assessor's office and of acquainting them thus early in life with the curiosities of property tax renditions.

Austin was incorporated in 1839, and so is a fairly old city. In the middle of the year 1916 it had a population, as estimated by United States census, of 34,016. It is not an industrial city, but it has a population which has been attracted by the educational advantages of the place, by the natural beauty and healthfulness of its location, and by the fact that it is the seat of the state government. Like all the other cities of Texas, Austin depends mainly for its revenues on the general

property tax levied under a provision of the state constitution which prescribes that all property, not legally exempted, shall be taxed uniformly and equally. The city tax rate in 1916 was \$1.95 on each \$100 of property. Unlike eight or more Texas cities, however, neither the Somers nor any similar scientific system of real estate valuation has been inaugurated.

The following analysis of the assessments of the city of Austin is the first of the kind for any Texas city. On the assessment blank for 1916 there were 59 items of personal property specified, but only the total of the values on each blank was obtained by the assessor's office. The tax officials everywhere either are too busy to assemble the assessed values of each of the different items or they do not appreciate the value of such work. Although land and improvements are separately assessed on the Austin rolls, they are not separately totaled. In those Texas cities which have adopted the Somers system or some other scientific method of assessment the totals of each are obtained and published. It is very desirable that there should be separate assessment and that the totals of each should be given, if for no other reason, because they provide the indispensable basis for an intelligent discussion of proposals of a single tax upon land or of the taxation of improvements at a lower rate than land, as was done by the short-lived "Houston plan".

The assessed value of real property for city taxation in 1916 was \$18,343,764, and of this amount \$10,600,324, or 57.8 per cent, was land, and \$7,743,440, or 42.2 per cent, was improvements. The assessed value of unimproved land was \$1,551,767, or 14.6 per cent of the assessed value of all land. This does not represent, however, the actual amount of unimproved property in the city, for in a great many cases the number of lots which are assessed as improved is in excess of the number even reasonably required for the house or other improvement. The extra lots are rendered in connection with the improvement in order to get the entire piece of property assessed at a lower value than it would be if it were separately assessed as improved and unimproved. In 1916 there were 1,612 different persons rendering unimproved property. The number and total of such assessments may seem to be large for a city

of 34,016 population, and a partial explanation is the large land area embraced within the city limits. The city has about 13 square miles of land area, and this takes in a number of suburbs or additions which await home builders.

Facts ascertained in this investigation relating to the assessments of corporations throw some light on what would be the effect upon the city's revenues of a state tax reform which would separate state and local revenues. The real estate of corporations was assessed at \$982,272, which was 5.3 per cent of all real estate; their personal property amounted to \$1,847,755, or 30.8 per cent of all personal property assessed. They constituted 1.7 per cent of the number of taxpayers, and their assessed values were 11.7 per cent of total assessments. Included in the preceding were the privately owned public utilities, which are four railroads, one street railway, three telegraph companies, two telephone companies, and one gas company. The water, electric light, and sewage plants are owned and operated by the city. The assessed value of all the public utilities was \$1,389,294, of which \$478,615 was real property and \$910,679 personal. Tracks, pipes, and similar property were assessed as personal property. The real estate of the railroad, the telephone, and the telegraph companies was assessed at \$438,815, and their personal property at \$423,974. The assessed values of the public utilities was 5.7 per cent of the total assessments of the city. Franchises are considered in Texas as property subject to the property tax, but there were no assessments of them in 1916. The city derived no revenue from these public utilities other than that from the property tax. In the agreement between the city and the Southwestern Telegraph and Telephone Company, which was ratified by a popular vote in January, 1917, the city will receive annually and in addition to the property tax 1.5 per cent of the gross receipts from all local telephone rentals and a lump sum of \$1,250. This is an arrangement which is very favorable to the city as compared with the previous one, and it is one which, if municipal ownership is not extended, should be applied to the other local public utilities as soon as circumstances will permit.

The other facts gathered about real property related to un-

known ownership, non-resident ownership, and ownership by women. The assessed value of real estate whose owners were unknown to the assessing officers was \$146,205, and the number of such assessments was 317. Non-residents of the city, including thereunder all persons giving rural free delivery addresses, were assessed for \$872,495. It was not possible to determine just who among those who gave rural free delivery addresses were actually non-residents. The assessed value of the real property of women was \$4,958,155, or 27 per cent of all real estate assessments.

If a field study of real estate undervaluation could have been made, the results would undoubtedly have shown that the percentage of assessed to true value averaged lower than the official standard of 66⅔, and they would have shown also a great lack of uniformity in the undervaluation of different pieces of property. To the writer's own knowledge some lots were assessed at about 10 per cent of actual market value, some at 20 per cent, others at 50 per cent, and so on up and down. Such lack of uniformity works the greatest injustice, and it is injustice not alone between property owners of equal taxpaying ability, but also between small and large property owners, and between the home owner and the land speculator.

The results of the investigations into personal property renditions are interesting and valuable as confirming what every one knows, but does not know in quantitative terms. It is a truism that money, credits, jewelry, household furniture, and similar taxable items escape taxation, but it is not known in many cases just how much of each is actually reached. In the case of Austin and other Texas cities the assessing officers do not compile the totals of the renditions of such items. As for the relative proportions of realty and personalty in the assessments of 1916, realty was 76.4 per cent and personalty was 23.6 per cent. In 1906 realty was 69.8 and personalty was 30.2 per cent. Though personal property assessments show an increase in absolute amount in recent years, the variation in amount has been due mainly to the percentage of assessed to true value of bank stock adopted by the city council, such percentage being the estimated assessment standard for

other property. In 1912 there was an increase in personalty of nearly \$2,500,000, but the explanation of this was that a 100 per cent standard was applied as compared with an 80 per cent one the year preceding. The following year (1913) there was a decrease in personalty assessments, and this was due mainly to a return to the 80 per cent standard. The assessments in 1916 were \$240,000 less than the assessments in 1915, due to the adoption by the city council of a standard of $66\frac{2}{3}$ per cent.

Of the total 1916 personal property assessments of \$5,656,486, there was \$2,529,525, or 44.7 per cent, of intangible personalty—that is, money, credits, and securities. This is a large percentage for intangible personal property, but one's admiration for this assessment achievement subsides when the discovery is made that \$1,841,235 of the intangibles is bank stock and the securities deposited in the state treasury in Austin by foreign insurance companies. Only \$688,290 was the sum of the intangibles which were difficult of assessment, and this was 12 per cent of all personal property assessments. Assessed credits amounted to \$502,128, and the amount of money assessed was \$177,177. The individual deposits and certificates of deposits which were reported by the four banks in Austin on December 31, 1915, were \$7,436,349. Assuming, and this is a too generous assumption, that only one-half of this amount belonged to taxable persons in the city of Austin on January 1, 1916, and reducing this share of one-half to the tax basis of two-thirds, the \$177,177 of money reached was only seven per cent of the amount taxable. In all probability it was less than one per cent of the amount taxable. The number of persons assessed for credits was 164, and the number assessed for money was 192. How absurd and farcical that, of a population of over 34,000 and of more than 6,000 persons and firms listed for taxes, only 192 should have been possessed of any money on January 1, 1916. Only three persons were assessed for stocks and bonds of corporations other than banks, and two persons were assessed for shares of unincorporated companies. The total of the assessments of these five lonely persons was \$8,985. No annuities or royalties were rendered for taxation, though Austin is supposed not to be without annuitants, inventors, and authors.

After money and credits, the property which most easily escapes taxation is jewelry, gold and silver plate, watches, clocks, household furniture in excess of the exemption to each head of a family of \$250, libraries, and similar property in the possession of their users. One would judge from the assessments of jewelry, including diamonds, and of gold and silver plate, that the well-to-do residents of Austin eschewed all vain show, for only \$19,601 of jewelry and \$4,945 of gold and silver plate were rendered. The assessed value of watches and clocks was \$18,575, and it is worthy of remark that of a population of over 34,000 only 605 persons were honest enough to declare their watches for taxation. Austin is a city with many beautiful homes, and not a few of them are expensively furnished with "period" furniture and oriental rugs, yet the total assessed value of furniture and sewing machines was only \$54,033. Pianos and organs in the hands of users were assessed at \$72,000. One hundred and thirty-nine home and professional libraries were assessed for \$18,170, and the bulk of this was for the books of persons practising the professions of law, medicine, engineering, or teaching. There are many brave hunters in Austin and there are not very many homes which are without a weapon of defense, yet in 1916 only 68 persons rendered firearms, and the amount for which they were assessed was \$1,055. Ten persons were assessed for dogs, and their declared value for taxation was \$290. There were 857 persons assessed for pleasure and commercial automobiles, and the value assessed was \$251,786. The average assessment of automobiles per person was \$293. The local board of equalization complains that there are persons who do not render their automobiles for taxation; it might also complain of a good deal of underassessment of such property.

A form of personal property before which the assessor is helpless, but which under the property tax he must nevertheless assess, is goods, wares, merchandise, and store fixtures. Business men who take inventories on or about January 1 are in a position to give the values of these forms of property, yet it is too much to expect of human nature that they will do this, and it is well known that they do not do so. The assessed

value of such property in Austin on January 1, 1916, was \$1,561,687. There were only six assessments of materials and finished goods in the hands of the manufacturer and for a total of \$13,400. However, the assessed value of manufacturers' tools, implements, and machinery, of steam engines and boilers, and of dynamos and electrical fixtures was \$239,486. Office furniture and fixtures, which included libraries in the case of some assessments, were rendered for \$53,153; and typewriters, adding machines, and cash registers amounted to \$13,562. Altogether personal property of a business and professional character, with the exception chiefly of the automobiles, the money and the credits of those engaged in business and in professions, but including bank stock and the securities deposited by insurance companies in the state treasury, was approximately \$4,850,000. This was 83.9 per cent of all personal property values.

Practically the only persons reached for personal property taxation were owners of real estate and persons who by reason of being engaged in business and in professions had established locations, and so could be easily found by the assessing officials. The total number of renditions of personal property only was 731 in 1916, and the valuations were \$1,186,980. However, the number of renditions of personal property made by persons rendering only personal property and who were not engaged in any business or profession, except teaching, was 297, and the assessed value of the property rendered by them was only \$154,698.

Some interesting facts were collected relating to women taxpayers. It was found that in 1916 there were 1,551 women taxpayers, 1,465 of whom were resident and 86 non-resident. The assessed value of their land was \$3,087,110; of their improvements, \$1,871,045; and of their personal property, \$284,104. The total of the assessed value of their property was \$5,242,259, which was 21.8 per cent of all assessed values. Advocates of woman suffrage are welcome to these figures as showing the material interest of the women in city government.

The assessment of taxes in Austin is by the elected city assessor and his deputies. The present assessor has held his

position for over thirty years, and he and his office force are faithful, experienced, and trusted public officers. The records in the office are admirably kept, and any facts regarding assessments and city taxes past and present can be easily obtained by any one interested. A board of equalization, appointed by the city council, sits each year for the purpose of equalizing assessed values. It has not the authority to add to the rolls property which has not been rendered, but must confine itself to equalizing the values of the rendered property. Yet, withal, there is the most diverse undervaluation of real estate and there is the failure to assess personal property. Obviously, there is great need of reform of the tax laws and of the tax administration. But there is nothing peculiar about the operation of the general property tax in Austin which distinguishes Austin from any other city where the tax is employed.

THE "SINGLE TAX LIMITED" IN WAR TIME

AN ACCOUNT OF THE OPERATION OF THE CANADIAN LAND TAX EXPERIMENTS UNDER CONDITIONS OF STRESS

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Perhaps the liveliest tax controversy of recent years has centered about the merits of the policy of exempting buildings from taxation, and those who favor this plan have made wide use of the experience of the cities of western Canada to support their position. Great quantities of data have been brought forward in an attempt to prove that the untaxing of improvements in these cities stimulated building activity, increased population, discouraged speculation, promoted home ownership, lessened unemployment, and accomplished other desirable ends. To these arguments the opponents of the policy very frequently retorted that they preferred to wait a few years until the system had passed through a period of depression. Almost any tax system, they argued, could make an attractive showing in prosperous years. The acid test would be applied in hard times.

For three years past western Canada has had hard times. Beginning just before the outbreak of the war and perhaps accentuated in some respects by it, the depression has continued for a period long enough to provide the test awaited by the critics of the plan. This paper attempts to formulate briefly the results of the operation of the "single tax limited", as the plan is often called, under the stress of unusual and abnormal conditions.

The most obvious, noticeable effect, and one whose significance can be variously construed, is a change in the attitude of the people themselves toward the system. The harmonious hymn of praise, which formerly arose from Winnipeg to Victoria, is no longer heard, for not only are there many who

have ceased to sing because doubt has entered their hearts, but there are also even more who insist upon chanting savagely a harsh and discordant hymn of hate. This last group is made up of real estate men who were caught by the depression with large quantities of unimproved land on their hands, which they are attempting to carry until happier times. The group of quiet doubters is recruited largely from the public officials and administrators whose enthusiasm has been dampened by the appalling growth of tax arrears.

One hears little these days of the various indirect social effects of the system, the fiscal difficulties being so acute as to demand all the attention. The officials feel that whether the system encourages home ownership or not is a minor matter compared with whether it brings in the money with which to meet the interest on the municipal debt. The owner of real estate is not now interested in the claim that the system makes it easier for him to build. It would be economic suicide for him to build under existing conditions. What he is concerned with is where he can find the money to pay the taxes on his holdings. Building activity ceased almost entirely with the outbreak of the war. Population almost everywhere decreased, some cities losing nearly half their inhabitants. What the result of this upon rents was can easily be understood. Under conditions of this sort it is idle to search for minor indirect social effects of the tax system.

Three years ago a resident of Saskatchewan whimsically complained that the primary test of culture in his community was one's knowledge of local realty values. Today it would be more nearly correct to say that the test is one's familiarity with the arrears of taxes act. Certainly the collection difficulties are serious enough to cause very grave concern. In Regina, which has the best record of any city of Saskatchewan, less than two-thirds of the 1916 levy was collected promptly; while in Swift Current, which has the poorest record of any of the Saskatchewan cities, less than one-third of the 1916 taxes was paid on time. In Vancouver the general levy for 1916 was \$3,208,217;¹ of this there passed into arrears the

¹ Annual report, city of Vancouver, 1916, page 19. Rebates are excluded.

sum of \$1,362,282. In some cases substantial portions of the arrears are finally paid, but everywhere they have accumulated until they have reached alarming proportions. For example, the total taxes receivable in Edmonton amounted at the end of 1916 to \$5,250,257.¹ Vancouver total arrears at the same date amounted to \$4,219,211,² and Victoria to \$2,332,378.³

These arrears are financed in various ways. In Regina most of the money has been advanced by the banks. In Saskatoon a large portion consists of unpaid contributions to sinking and depreciation funds. In Edmonton short term debentures have been issued to cover part of the arrears. Whatever the plan, these arrears are a source of much embarrassment. The cities differ also in their policy toward the enforcement of collections. In Saskatchewan the tax sale is held promptly after taxes have been six months in arrears. In Edmonton, Vancouver, and Victoria no tax sales have been held for years. The Saskatchewan tax sales have not proved to be a solution of the difficulty since, because of the lack of other buyers, the cities have found it necessary to bid in the real estate in large quantities. Indeed in the case of no city have outside bidders appeared in sufficient numbers to absorb even one-half the offerings. Consequently, instead of the revenue which the cities really want, they secure the lands, for which they have no present use, and which form a decidedly "slow" asset.

It has been contended that these difficulties of collection are not due to the fact that the taxes are concentrated on land values, but that the same situation would have developed with any system under the peculiar circumstances which have been present. Certainly the difficulties have been sufficiently serious everywhere, but such data as are available tend to show that land values form the least stable portion of the tax bases, and that those cities which have depended upon land most heavily are those which have had the greatest difficulty

¹ City of Edmonton, Financial statement and reports, 1916, page 16.

² Including frontage taxes. Report, 1916, page 6.

³ Annual reports, 1916, page 26.

in collecting taxes. Taking, for example, the cities of Saskatchewan, it is found that the order in which they stand with regard to success in making collections promptly is almost exactly the reverse of the order in which they stand in regard to their dependence upon land as a source of revenue. In other words, there is an almost perfect negative correlation, tending to show that the more land tax the more difficulty, and the less land tax the less difficulty, in collecting taxes promptly.¹

The reasons for the peculiar difficulty which has been experienced in collecting land taxes are apparent when the conditions in the region are understood. Land values are predominantly speculative. Assessments, it is true, have always been high, but rates have been low and a good market has existed for land, so that it was usually easy to realize upon the investment. The advent of the depression radically altered this; assessments remained high, rates increased, and the market disappeared. As a typical case, consider the changed position of a man of limited resources who had purchased a vacant lot as a speculation. Taxes, if he took them into account at all, he thought of as a bothersome but insignificant type of fee which he had to pay to the public treasury for the privilege of speculating. Receiving no returns from the land, it was necessary for him, of course, to draw upon his income from other sources to pay his taxes, but the prize for which he was playing was normally so large in comparison with this fee as to render it of slight importance. This speculator was placed in a peculiarly weak position by the depression for, at the same time when the prize for which he was playing diminished in value, the fee or tax for the privilege of continuing his specu-

1

	Order of success in collecting taxes promptly	Order of degree of dependence on land values, excluding special assessments	Order of degree of dependence on land values, including special assessments
Regina	1	6	5
Moose Jaw	2	5	6
Saskatoon	3	4	4
Prince Albert ...	4	2	2
North Battleford.	5	3	3
Swift Current ...	6	1	1

lation increased in amount. Moreover, it was often less easy for him to secure the money with which to pay his fee. These factors combined in many cases to make the proposition so unattractive that the speculator abandoned it as a "bad bet".

This is exactly what has happened in so many cases in the Canadian municipalities. If a speculator chooses no longer to carry his land, there is no way of compelling him to do so. There are doubtless some cases of owners paying their taxes on land even after it is no longer economically wise, but in such cases the owners are either ignorant of the true conditions or influenced in their action by other motives, such, for example, as a desire not to be known in the community as one who does not meet his every obligation. As one citizen remarked, "To be a good citizen one must sometimes be an economic fool". It is apparent, therefore, that recent history in western Canada demonstrates clearly the existence of a definite limit to the tax which can be imposed on vacant land. The same proposition holds true but in a different degree in the case of improved land. This, fundamentally, is the explanation of the collection difficulties experienced. There is a definite point beyond which gamblers will not continue to pay. In many municipalities the tax has been pushed beyond the limits of its fiscal capacity and, if it is desired to preserve land values as a part of the tax base, there is no option but to reduce the tax to a sum commensurate with the prize which the speculator can hope to gain. This usually involves seeking revenue from sources other than land.

It should be carefully noted, however, that nothing which has been said affects the attractiveness of the policy of exempting improvements during periods of prosperity. Conditions in western Canada are at present admittedly abnormal. Indeed, there is every reason both from the economic and ethical points of view why the advantage gained through the assertion of the public's claim to a large portion of the ground rent should be preserved. But even though it be admitted that large dependence upon land values is an attractive policy when a community can afford it, the experiences of the Canadian cities during the past three years show that some cities under some circumstances find great difficulty in financing

themselves under this plan. If great dependence is to be placed upon speculative land values as a source of municipal revenue, it is, therefore, the part of wisdom to have available supplementary sources which can be utilized before placing a strain upon the land tax which will cause it to crumble and break down.

Little has yet been done in the Canadian municipalities in the direction of relieving the situation. Last year,¹ it is true, the towns and villages of Alberta were permitted to broaden their tax bases by assessing buildings and businesses, and a number of these small municipalities accordingly have abandoned the plan of taxing land value only. In Saskatchewan a considerable number² of the villages and some of the towns have this year taken similar action. In Winnipeg, where improvements are taxed at two-thirds their value, a commission reported recently that the "primary aim" of the changes they suggested was "to relieve rather than to increase the burden of taxation upon real estate".³ The government of Saskatchewan is said to be considering the introduction of legislation this month (November, 1917) broadening the basis of taxation in the municipalities generally throughout the province. In the city of Medicine Hat, Alberta, a business tax was imposed this year (1917) and a committee appointed by the council reported in favor of taxing improvements in 1918. Edmonton has secured amendments to its charter permitting the taxation of buildings and business, and the question is to be decided by a vote of the people at the next municipal election. The Edmonton auditors reported in May, 1917, that it appeared to them that "the time has arrived when it is absolutely necessary that some measures should be adopted to establish a closer relationship than at present exists between the actual realized revenue and the nominal revenue".⁴ Vancouver secured a charter amendment permitting

¹ Report of the department of municipal affairs, 1916, pp. 9, 16.

² One estimate gives 12.

³ Report of the board of valuation and revision of systems of assessment and taxation, Winnipeg, 1917, page 18.

⁴ Edmonton, Financial statements and reports, 1916, page 13.

a business tax, but thus far has made no definite change in the system.

Doubtless the most satisfactory solution of the problem would be furnished by the arrival of a period of prosperity which can be anticipated with the ending of the war, and this is the solution which the municipalities are hoping to utilize. It is evident, however, that unless prosperity arrives very soon the cities of western Canada will have no choice but to abandon, temporarily at least, the plan of the "single tax limited".

TAX LEGISLATION OF 1917

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The legislatures of all except a very few of the states have this year held regular or special sessions. The task of reviewing in summary form their action in relation to taxation is not an easy one at best. The tardy publication of the session laws has prevented the reviewer from making a personal examination of the enactments in several states, but even where the laws have been examined with some care it is quite possible that in the process of preparing the following condensed and summary statement errors of fact, of interpretation, or of emphasis may have crept in here and there. To anyone who will take the trouble to point out such errors the author will be sincerely grateful.

Within the scope of a review of this character it is as impossible as it is undesirable to refer to the numerous slight amendments which involve no important change of principle and no significant change of method or machinery. Nearly all the amendments are concerned merely with minor changes in rates, exemptions, or administrative methods. A few typical, and perhaps more important, matters of this sort may be referred to at this point.

In Arizona the offices of city assessor and tax collector were abolished (Ch. 37) for reasons of economy, their work being taken over by county assessors and county collectors. To reduce the expense of making up the tax roll the same act permits personal property to be entered on the roll without classification into several items, the detailed classification being required only in the original assessment lists.

A supplement to the general tax act of New Jersey (Ch. 31) provides for the equalization of assessments between taxing districts, by county boards of equalization within counties and by the state board between counties.

To secure full value assessments without causing great in-

crease in taxes, an Iowa act (Ch. 343) requires the tax rate to be based on the valuation of the preceding calendar year. A Nebraska law (Ch. 224) provides that every deed, mortgage, and conveyance of real estate must state in the body of such instrument the true consideration paid for the transfer whenever the amount exceeds \$100. A Wisconsin amendment (Ch. 463) defines the terms "real property" and "personal property" so as to include buildings, fixtures, improvements, rights, or privileges on land owned by another in the term "real property", instead of in the class of "personal property".

Only one state—Kentucky—thoroughly overhauled its tax system, for which an extraordinary session of the legislature was called. To the various measures enacted in that state we shall refer under their appropriate subjects. The property tax remains with a reduction in rate from 50 cents on \$100 value to 40 cents. All property subject to taxation for state purposes is also taxable locally, except certain specified classes, including money in hand, notes, bonds, accounts and other credits, and shares not exempted, which may be taxed for state purposes only.

In Tennessee the rate of the general tax on property, known as a privilege tax, was raised (Ch. 70) from 50 cents on each \$100 in value to 65 cents.

TAX COMMISSIONS

At least two permanent tax commissions have been created this year, while in several states the commission has been re-organized or its powers changed. One commission was abolished.

The Kentucky legislature (Ch. 1) wisely created a commission to administer the new revenue system. It consists of two members appointed by the governor for a four year term, with the auditor of public accounts, ex-officio. The appointive members must represent the two dominant political parties and give their entire time to the office, at a salary of \$3,600. The commission is endowed with broad powers in the assessment and equalization of property and is specifically required to advise with and supervise assessing officers and to organize a conference of county tax officials each year.

A commission of three members, appointed by the governor, was created (House Bill 379) in Missouri. It is given authority and general supervision over all assessing officers and county boards of equalization as well as exclusive power of original assessment of public utility corporations, heretofore possessed by the state board of equalization. In addition to its normal functions relating to taxation, the commission is required to make a state budget and to supervise and investigate state expenditures. (See p. 402.)

In Washington the state board of tax commissioners was abolished (Ch. 54) and its powers and duties vested in a single commissioner appointed for a four year term by the governor and removable by him at will. The commission seems to have incurred the displeasure of corporations affected by its reforms. Its unpopularity is traced in part also to its advocacy of the abolition of the general property tax and to the general feeling of opposition to government by commissions. The composition of the state board of equalization was changed at the same time (Ch. 55), a member of the public service commission, designated by the governor, being replaced by the state tax commissioner, who becomes secretary of the board. The other members are the state auditor and the commissioner of public lands.

The personnel of the Nevada Tax Commission was changed (Ch. 177) by dropping two of the three members of the railroad commission, serving ex-officio, and instead of one appointed member providing five members appointed by the governor for a four year term from the state at large, no two of whom may be from the same county. Of these five members, one is to represent and be actively engaged in each of the following lines of business; real estate, banking, mining, live-stock, and general business. The governor remains chairman and a non-member secretary is provided. The duties and powers of the commission, elaborately defined in the statute, include general supervision and control over the tax system, with original power of appraisal of interstate and inter-county public utility corporations. Sitting with the several county assessors, it also acts as a board of equalization.

Changes of more or less importance have also been made in

the laws affecting other permanent commissions. In North Dakota the authority of the commission over local tax officials was increased by giving it (Senate Bill 52) powers of assessment and review. In South Dakota the commission is required to make an annual instead of a biennial report, and receives some additional powers (Ch. 126) as well as an increase of salary (Ch. 125). The Oregon commission, as created by a 1913 statute (Ch. 193), consisted of two tax commissioners and the governor, secretary of state, and state treasurer, ex-officio. One of the appointive members has now been dropped (Ch. 236), the one remaining, to devote all his time to his duties at a salary of \$3,500, must be "skilled and expert in matters of taxation".

In Montana a temporary tax and license commission was provided, the members being named in the act (Ch. 73). This commission has broad powers of investigation and is required particularly to inquire into the amount of taxes paid by corporations and to co-operate with the state board of equalization, to which a preliminary report must be made within the first six months after its appointment. The final report is to be submitted not later than November, 1918.

By resolution (No. 46) the North Carolina legislature provided a special commission consisting of the governor, the chairman of the state tax commission, and four other persons appointed by the governor, to make an "extensive investigation" and submit to the legislature a comprehensive plan or plans of taxation. The resolution specifically requests an exhaustive study of the practicability of the separation of sources of state and local revenue.

INCOME TAXES

A general income tax was enacted in only one state—Missouri. The law (Senate Bill 415), which applies to corporations as well as individuals, is an adaptation of the federal income tax, to which it conforms generally, so far as is possible under the limited jurisdiction of the state. One-half of one per cent is levied on incomes from all sources in excess of \$3,000 for single and \$4,000 for married persons. Property

from which income is derived is not exempt. A description of the administrative provisions cannot be given here.

In Delaware an income tax (Ch. 26) of one per cent was levied on the net incomes of natural persons whose gross income is \$1,000 or more. Corporations are required to furnish to the collector of state revenue any information requested.

The Oklahoma income tax law of 1915 (Ch. 164) was amended (Ch. 265) by providing an elaborate procedure against those who fail to make a report or render a false statement. A sweeping reduction in the rates is also made and the stringent prohibition on printing or making known the returns modified. A dozen or more amendments were made to the Wisconsin law. Chapter 247 defines more carefully the term "dividend"; chapter 231 permits the deduction from gross income of cash bonuses to employees actually paid out during the year and changes the deduction on account of interest payments. Chapter 248 changes the method of determining profits from the transaction of business or from the sale of real estate or other capital assets; chapter 246 changes the method of determining the rate and making the assessment for incomes of non-residents from sources located in the state. Various other amendments are of minor interest. (Ch. 161, 248, 264, 265, and 374).

The Massachusetts law was amended (Ch. 317 and 339) in relation to the distribution of the proceeds of the income tax. In South Dakota a proposed constitutional amendment (Ch. 168) will permit the taxation of incomes.

Corporation income taxes of one kind or another were provided in several states and are discussed below in connection with other corporation taxes.

INHERITANCE TAXES

Inheritance tax legislation of some kind has been passed this year in at least a score of states. The enactments in the main are aimed at improved administration. The most interesting feature of the 1917 laws is the appearance of a system of farming out the collection by contracting with private persons to collect taxes due under the law for a percentage of the revenue received. In the following brief review of 1917 laws the alphabetical order of the states is followed.

In California the state controller is required (Ch. 721) to establish and maintain an inheritance tax department and in connection therewith to appoint an inheritance tax attorney and assistants. Such a bureau, if adequately supported and properly manned, might perform a most valuable service for the inheritance tax officials of all states. To quote the exact language of the statute, this new department is designed "to gather, record, compile, publish, and distribute such information and data as the controller may direct, relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement, or evasion of such laws".

The collateral inheritance tax law of Delaware was repealed (Ch. 7) and a new law passed taxing both direct and collateral heirs under a graduated scale, the maximum rate for direct inheritances being four per cent and on the collateral eight per cent.

A number of changes have been made in the Indiana act of 1913 (Ch. 118). Conveyances, gifts, or transfers made within two years of death, without consideration, are now subject to the inheritance tax. Exemptions are to be taken out of the first \$25,000 of each beneficial interest. Several changes are made in the procedure of appraisal. A \$5.00 fee is allowed to prosecuting attorneys appearing in behalf of the state to enforce payment of taxes, to be paid by the person from whom the taxes are due. The law creating a state highway commission (Ch. 87) provides that the revenues from the inheritance tax shall be paid into the state highway fund.

In Kansas amendments designed to improve the administration of the law were passed (Ch. 319). The tax commission, with increased powers, is to constitute an inheritance tax commission. The amended law also provides for the taxation of successions to property arising out of the exercise of powers of appointment. Attempts to re-enact a direct tax, repealed four years ago, failed.

An amendment in Maine (Ch. 266) abolished the reciprocal provisions relating to the taxation of real and personal property of non-resident decedents as well as the reciprocal provisions in respect to the property of resident decedents when situated in other states.

Missouri repealed (House Bill 638) the collateral inheritance tax law of 1909 and substituted therefor a direct tax on all degrees of relationship. The primary rates vary from one to five per cent, progressing according to the amount of the inheritance. The usual exemptions for religious, charitable, and educational purposes are allowed. Transfers of less than \$100, and \$15,000 to husband or wife and smaller amounts to other relatives, are also untaxed. On sums in excess of \$400,000 six times the primary rate is levied. It is possible, therefore, that a rate of 30 per cent may fall on a very moderate sum inherited by strangers in blood, by a body politic, or associations and corporations.

North Dakota re-enacted (Senate Bill 227) its inheritance tax, with important changes. The new law follows in the main the recommendations of the National Tax Association. Both direct and collateral heirs are subject to rates graduated according to the amount of the inheritance and the relation of the beneficiary to the decedent.

An Oklahoma amendment (Ch. 267) authorizes the state auditor, with the consent and approval of the attorney-general, to enter into contract with licensed attorneys to collect the inheritance tax, such agents to receive not over eight per cent of the sums collected. Another amendment (Ch. 266) permits the exemption of estates situated partly outside the state in the ratio which the property inside bears to the total.

In Oregon (Ch. 372) the rates have been increased. An exemption of \$5,000 is allowed to direct heirs, \$1,000 to collateral, and \$500 to other heirs. On direct inheritances the rate runs from one per cent, in graduations of one-half of one per cent, to four per cent on \$600,000 and over, above the \$5,000 exemption. For collateral heirs the rates run from two per cent to eight per cent on \$200,000 and over, and on all others from three per cent to 10 per cent on \$200,000 or more.

In Texas a radical change was made in the method of collection (Ch. 166). Collection being in the hands of a county official, the state has heretofore lost large amounts of revenue. Now the comptroller of public accounts is authorized and directed to contract with someone to attend to the collection of the tax. The compensation under such contract is not to exceed 10 per cent of the taxes collected.

One Utah act (Ch. 87) amends the inheritance tax in minor points relating to exemptions. Another (Ch. 3) gives the attorney-general power to obtain from domestic corporations information respecting stock holdings of any decedent.

A Vermont act (No. 52) adds to the collateral inheritance tax a graduated tax on direct inheritances in excess of \$10,000 at rates ranging from one to five per cent. Various minor amendments were made in Washington (Ch. 146), in addition to a revision of the schedule of rates (Ch. 43). The new rates are progressive for direct as well as for collateral heirs, the highest rate being 15 per cent now instead of 12 per cent formerly. In Wisconsin also numerous amendments were effected, one of which (Ch. 320) involved a change in rates.

MORTGAGE AND SECURED DEBT TAXES

Tennessee has imposed (Ch. 70) a state privilege tax on mortgages or deeds of trust and similar instruments on real and personal property, in lieu of all other taxes. The rate is 15 cents on each \$100 of such indebtedness, which must be paid before the instrument is recorded. The law does not apply to loans under \$1,000. Ohio has also enacted a sort of mortgage recording tax. An amendment to the provisions for listing personal property (House Bill 214) exempts mortgages hereafter executed and recorded and debts secured thereby, on real estate taxed in the state, if registered and a registration fee of one-half of one per cent paid thereon in addition to the recording fee. A constitutional amendment proposed (House Joint Resolution 34) authorizes the passage of laws designed to provide against double taxation resulting from taxation of both real estate and mortgage debt secured thereby.

In Connecticut mortgage bonds of a corporation secured by a lien upon its property in the state are exempted (Ch. 230) to the extent to which the property is assessed locally. If the total amount of such bonds exceeds the assessed value of property in the state, such a percentage of the value of each bond is exempt as the total of assessed values bears to the total amount of bonds outstanding. One of the new Kentucky tax laws (Ch. 11) imposes a tax of 20 cents on each \$100 or fraction thereof of indebtedness secured by mortgage on property

in the state, if the indebtedness does not mature within five years. If the mortgage includes property outside the state, the tax is to be imposed upon such portion of the whole debt as the value of the property in the state bears to the whole property mortgaged.

Similarly, Minnesota has adopted an amendment (Ch. 73) imposing a tax of 15 cents on each \$100 of real estate mortgages in the state maturing within five years, and 25 cents on the \$100 of such mortgages or parts of mortgage debts not maturing within five years.

The New Jersey legislature, amending the general tax act (Ch. 82), extended the exemption of mortgages on real property from property taxed in New Jersey to property taxed wherever located. The object was to make it practicable for savings institutions to invest in foreign bonds, but its application was later (Ch. 23) limited to railroad bonds held by savings banks.

A New York act (Ch. 72) provides that the mortgagor or mortgagee of any mortgage which covers property both within and without the state may pay the tax upon the full amount and secure its exemption.

The New York "secured debts" tax law has been superseded by a tax on investments (Ch. 700) constructed along similar lines and also designed to reach securities which have usually escaped the personal property tax. Under the new law the owner of an "investment" may secure its exemption from the personal property tax for one or more years, not exceeding five, by paying to the state comptroller a tax of 20 cents on each \$100 face value for each year of exemption desired. If not exempted under the law, the owner must pay a personal tax without deduction of "just debts" owing him. A new penalty has been added by which investments of decedents not exempted under the old "secured debts" law or under the present law must pay an additional inheritance tax of five per cent unless it can be proved that the personal property tax on them has been paid. Investment securities include bonds of railroad companies, public utility corporations, and industrial corporations whose properties are located outside the state; equipment bonds, debentures, and bonds of other states and municipalities in other states and of foreign governments.

Secured debt tax laws in force during the period from September 1, 1911, to April 1, 1915, permitted bonds and certain other obligations to be permanently exempted from the personal property tax on payment of one-half of one per cent of face value; and from May 1, 1915, to October 31, 1915, and April 21, 1916, to December 31, 1916, permitted exemptions from personal property tax for five years on payment of a tax of three-quarters of one per cent. The new law expressly continues the exemption obtained under these laws.

Missouri has passed an act (House Bill 406) under which "secured debts" are constituted a "separate and distinct" class of property for taxation. These include state and municipal bonds, bonds and notes secured by collateral, as well as bonds not payable in one year secured by collateral mortgage or deed of trust, wholly or in part on real estate. Secured debts taken by the owner to the county recorder of deeds are exempted from all other taxation, state and local, by the payment of five cents for each \$100 face value when the date of maturity is less than one year from date of payment of tax; 10 cents on each \$100 when maturity is from one to two years; 15 cents when two to three years; 20 cents when three to four years; and 25 cents if more than five years. Renewals are taxable at the rates provided for the original security.

An interesting feature of the law is a provision permitting each county of the state to levy "a like tax on secured debts owned by residents of the county", the total of which may not exceed the amount levied for state purposes. Moreover, each city and town may also levy a secured debt tax on its residents up to the amount of the tax levied by the state.

The Michigan secured debts tax has been extended (No. 173) to include public bonds of other cities or countries and their subdivisions. North Carolina has provided a law (Ch. 119) which exempts from taxation notes and mortgages given for the purchase of a home, not exceeding \$3,000 and running not less than five nor more than twenty years, if the interest does not exceed 5.5 per cent. A Vermont act (No. 69) permits a mortgagee or assignee of a real estate mortgage to pay the tax and add it to the debt or obligation secured by the mortgage.

By a constitutional amendment (Ch. 142) proposed in Mon-

tana this year, mortgages of record on real or personal property within the state are to be exempted.

OTHER INTANGIBLE PERSONALTY

In view of the fact that most of the trouble with the general property tax relates to intangible property, it is remarkable that so little legislative tinkering was indulged in this year.

Oklahoma has levied (Ch. 264) a flat rate tax on bonds, notes of any duration over eight months, and other choses in action. Such intangibles, if taken or sent to the county treasurer and listed, will pay a tax of two per cent of their face value for five years, or at the same rate for a longer or shorter period. During the period for which this tax is paid they are exempt from all other taxes, state and local. Listing had to be done within sixty days of the date on which the act became effective. New evidences of indebtedness, in order to secure the low rate, must be listed within sixty days after being executed.

A Minnesota act (Ch. 130) amends the definition of the term "credits" so as to include shares of stock in foreign corporations the property of which is not assessed in the state. Such property, which has heretofore been subject to the regular property tax at 40 per cent of its value, will now be listed and assessed as money and credits and taxed at the uniform rate of three mills on \$1.00 in lieu of all other taxation.

A North Dakota law (Senate Bill 55), modeled on the Minnesota statute, levies a rate of three mills, in lieu of all other taxes, on money and credits, including stocks and bonds, with no deduction for liabilities.

One of the new Kentucky laws (Ch. 4) levies on all deposits in any bank, trust company or national bank a tax of one-tenth of one per cent annually, in lieu of all other taxes.

CLASSIFICATION OF PROPERTY

The classification amendment in Oregon, though defeated at the general election of 1914 by a vote of 59,206 to 116,490, was approved this year at the special election of June 4, by a vote of 62,118 to 53,245. The constitutional requirement that "all taxation shall be equal and uniform" is thus abolished and

the way cleared for any kind of reform in the general property tax that the legislature and the voters may see fit to adopt.

The South Dakota legislature submitted a similar proposal (Ch. 161). In addition to permitting classification, the amendment empowers the legislature to impose taxes on incomes and occupations, specifically permitting graduated and progressive rates and reasonable exemptions.

A classification amendment failed in the Kansas legislature by a narrow vote. A Kentucky act (Ch. 8) requires that all laws passed pursuant to the classification amendment adopted in 1915 shall be subject to a referendum upon petition of five per cent of the votes cast for governor at the last preceding election.

In North Dakota, where the classification amendment has been in force two years, an act was passed (Senate Bill 49) dividing assessable property not subject to gross earnings taxes or otherwise exempted from the general property tax into three classes. Class 1 includes all land, town and city lots, railroad, express, and telegraph property, and bank stock—which are to be assessed at 30 per cent of full value. Class 2, which includes franchises, patents, royalties, telephone lines, etc., is assessed at 20 per cent. Property in Class 3, which includes among other property stocks, bonds, money, and credits not assessed under the flat rate law referred to above, is to be assessed at five per cent of full value.

CORPORATION TAXES

So far as the reviewer has been able to discover, no legislation of special significance has been enacted affecting corporations of any kind. Numerous amendments have been made, including rate increases in several states. In summarizing the laws to which reference is to be made in this section, they are here classified as income taxes, gross receipts taxes, capital stock taxes, ad valorem taxes, and organization fees.

1. *Income Taxes:* Perhaps the most important act of the year is the New York tax of three per cent on the net income of manufacturing and mercantile corporations (Ch. 726). Several states have now enacted income taxes on corporations,

making use of the federal income tax returns to simplify their administration. This law follows the same method in respect to two important classes of corporations. The new tax supplants the personal property tax, the capital stock tax, and the annual franchise tax as applied to these two classes of corporations. Manufacturing corporations have not been subject to the annual franchise tax.

The act applies to corporations engaged in manufacturing, buying, and selling *tangible* personal property. Corporations dealing in stocks and bonds and other intangible property are thus excluded, while other classes of corporations, especially public utilities, are expressly exempted. Foreign corporations pay in the proportion which the value of their real property and tangible personal property, including certain bills receivable and the stock of other corporations, bears to the aggregate value of the same items both within and without the state. Administration is in the hands of the state tax commission. One-third of the revenue is returned to counties in which the corporations have real and personal property or their principal office in the state. The first taxable year begins November 1, 1917.

In Montana (Ch. 79) a tax of one per cent, described as an annual license tax for carrying on business, is levied on the total net income of domestic and foreign corporations received from all sources within the state. The method of ascertaining net incomes is specified in detail. Occupational license taxes on certain public utility corporations are repealed. Mutual or co-operative and publicly owned utilities, as well as a great variety of non-profit making organizations, are specifically exempted.

West Virginia, in order to provide revenue needed to meet expenses incident to the war, has authorized (Ch. 6, Second Extra Session, 1917) an addition, not to exceed one-fourth of one per cent, to the annual special excise tax of one-half of one per cent levied by the 1915 statute on the entire net income of foreign and domestic corporations derived from business transacted in the state. The exact amount of the levy is to be determined by the board of public works. The tax is to last only during the war, the revenue being used to defray the expenses of the state council of defense.

2. *Gross Receipts Taxes:* In New Jersey persons, corporations, etc., occupying the public streets have heretofore been subject to an annual franchise tax of two per cent on their gross receipts. A 1917 amendment (Ch. 17) increases the rate of the tax one per cent a year until the rate reaches five per cent. The amendment does not apply to utilities whose gross receipts do not exceed \$50,000. The new provision means that in the future all utility corporations occupying the public thoroughfares will pay the same rate of tax long borne by street railway corporations.

A gross receipts tax of 2.5 per cent has been levied as a license fee on express corporations doing business in the state of Montana (Ch. 87), and on private car companies five per cent of gross receipts from business done within the state (Ch. 82). Determination of the amount of gross receipts taxable is in both cases in the hands of the state board of equalization.

In Maine the excise tax on parlor cars is increased (Ch. 210) from six to nine per cent of the gross receipts from business done wholly within the state.

3. *Capital Stock Taxes:* Missouri has levied (House Bill 800) a franchise tax of three-fortieths of one per cent of the par value of the outstanding capital stock and surplus of all corporations, both foreign and domestic, employed in the state. The law does not apply to corporations not organized for profit nor to express and insurance companies, which pay a gross receipts tax.

The graduated franchise tax on foreign corporations doing business in Texas has heretofore been applied to the entire capital stock, regardless of the amount actually employed within the state. A 1917 amendment (Ch. 84) limits the tax to the authorized capital stock, including surplus and undivided profits, actually employed in the state, the amount so employed to be determined by the ratio of gross receipts from intrastate business to total gross receipts. Rates range from \$1.00 on each \$1,000 of capital stock up to \$2.00 on each \$50,000.

A Kentucky amendment (Ch. 7) increases the annual license tax from 30 cents to 50 cents per \$1,000 of that part of the authorized capital stock of corporations represented by prop-

erty owned and business transacted in the state. In Colorado also the rate of license tax has been increased (Ch. 10, Laws of 1917, Extraordinary Session). Instead of the rate of two cents on each \$1,000 of capital stock of domestic corporations, the law now provides an annual tax of \$10 on authorized capital of \$100,000 or less, and 10 cents on each additional \$1,000 or fractional part thereof. The same increase is made (Ch. 11) in the rate applied to the par value of the capital stock, property, and assets of foreign corporations located and employed in the state.

Investment companies in New York are to pay (Ch. 707) a franchise tax of 1.5 mills on each dollar of the face value of their capital stock, plus one per cent of their surplus and undivided profits.

North Dakota has heretofore allowed banks to deduct from the par value of their stock, surplus, and undivided profits a sum equal to five per cent of their loans and discounts. This provision has now been stricken out. Being permitted also to deduct the value of land owned in other states and countries, they have claimed deductions greater than their capital stock, surplus, and undivided profits. Deduction of land outside the state is no longer permitted and deductions for land in the state are limited to 60 per cent of the surplus.

4. *Ad valorem Taxes:* A supreme court decision in South Dakota left that state without an adequate law for taxing express, telegraph, and sleeping car corporations. To remedy the situation the legislature passed elaborate statutes (Chs. 120, 121) providing for an ad valorem state tax in lieu of all other taxes, state and local. The law specifies in much detail the reports to be submitted to the tax commission and the process by which the commission is to determine the "true and full cash value" of the entire property of these corporations. Values for the state and for each county are prorated on a mileage basis.

A new state ad valorem tax, in lieu of other state and local taxes, has been applied to express companies in Oklahoma (Ch. 263). Assessment, made by the state board of equalization, must be "the proportion of the value of all the property and assets . . . pertaining to or employed in the express busi-

ness", prorated to the state on a mileage basis, "not including ocean mileage".

Minor changes have been made in the provisions of the Michigan law assessing an ad valorem tax on telephone, telegraph, and other companies in lieu of all other taxes (House Act 208). A Minnesota statute provides for the taxation as personal property of all gas, electric, and water mains, pipes, conduits, subways, poles and wires located in any road, street, or alley. A 1917 amendment (Ch. 298) provides that all property of this sort shall be taxed as personal property "wherever constructed or located".

A Maine law (Ch. 52) specifically includes transmission lines of electric light and power companies in the list of things taxable as real estate.

5. *Franchise Taxes*: Kentucky legislation (Ch. 13) makes numerous changes in the method of determining valuations of the corporate franchises of public utility corporations, which are taxable as other property for both state and local purposes. For state purposes the rate is 40 cents, to which is added the local rate for the use of localities.

The New York franchise tax on corporations having shares without a nominal par value has been amended (Ch. 501) so as to provide for taxation on the basis of "such portion of the net assets of the corporation as its gross assets employed in any business within the state bear to its entire gross assets wherever employed".

6. *Organization Taxes*: The minimum organization tax on domestic corporations in New York has been raised from \$5.00 to \$10 (Ch. 493). Foreign corporations are required (Ch. 490) to pay a license fee of one-eighth of one per cent of capital stock employed within the state, the minimum fee not to be less than \$10. Any company increasing its capital stock employed in the state to more than \$8,000 must pay an additional fee at the same rate.

MISCELLANEOUS TAXES

1. *Road Tax*: Increasing expenditures for good roads is reflected in several states in special tax provisions. The Kentucky legislature provided (Ch. 2) for submitting to the voters

of the counties the question of imposing a tax not exceeding 20 cents on the \$100 of valuation on all property subject to local taxation, for the improvement or construction of public roads and bridges. A New Jersey act (Ch. 16) levies an annual tax of one mill for five years on the value of all real and personal property in every municipality, upon which taxes are levied, the revenue by another law (Ch. 230) being definitely appropriated to the road fund.

The Missouri legislature proposes (Senate Joint and Concurrent Resolution 3) to amend the constitution in respect to minimum tax rates of local units by requiring county courts, upon authorization from the qualified voters of any road district, to make a levy for district road purposes not exceeding 75 cents on \$100 valuation of all property in the district. It is also proposed to permit the levying of a state tax of 10 cents on each \$100 of assessed valuation, one-half the revenue therefrom to be placed to the credit of the state road fund, one-fourth to be apportioned to the counties and the city of St. Louis according to area, and one-fourth according to population.

2. *License Taxes:* In Missouri the state saloon license was increased, a tax imposed on soft drinks, and the automobile license tax doubled and appropriated to the good roads fund. Kentucky enacted a license tax of two cents a gallon on distilled spirits (Ch. 5), an excise tax of 10 cents a barrel on fermented liquor, and a graduated license tax of from \$200 to \$500 a day on racetrack business.

3. *Taxation of Mineral Resources:* A Kansas law (Ch. 323), expected to be an important source of revenue for local governments, provides for the assessment as personal property of oil and gas leases, oil and gas wells, and equipment used in the development of oil and gas properties. A Kentucky act (Ch. 9) imposes for state purposes a license or franchise tax of one per cent on the market value of oil produced by any person, firm, or corporation in the state. An additional levy of one-half of one per cent may be made by counties. A constitutional amendment proposed in Utah subjects metalliferous mines to an assessment of \$5.00 an acre in addition to a value based on some multiple or submultiple of the net annual pro-

ceeds. Coal and other mines, as well as the value of mining machinery and property, together with surface uses other than mining, are to be assessed at full value.

4. *Live-stock Tax*: A special tax on live-stock is provided (Ch. 10) by the Kentucky legislature, the rate for state purposes being limited to 10 cents on \$100 valuation and for local purposes as fixed by local authorities. A constitutional amendment proposed in Wyoming (Ch. 86) provides for a special tax on live-stock for the purpose of raising funds for stock inspection, stock protection, and stock indemnity.

TAX AND DEBT LIMITS

While attempting to stem the tide of rising state expenditures by improved budget procedure and boards of control, the legislatures in a number of states seek to curb local expenditures by limiting tax levies, while in one noteworthy California statute both a budget procedure and a tax limit are prescribed for local governments.

This California act (Ch. 729), limiting the aggregate amount of revenue that may be produced by tax levies of the political subdivisions of the state, creates at the same time a state board of authorization to enforce the law and requires the making and filing of local budgets. Ninety days before the date for fixing the tax rate each local spending official must file with the local governing body, on forms prescribed by the state board of authorization, a statement showing income and expenditures for two years past and estimates of the money needed for the next fiscal year. At least sixty days before the legal date for fixing the tax rate the local governing body must file with the state board of authorization the estimates and statements of the local officers and the budget for such political subdivision for the ensuing fiscal year, together with such information as the state board may require. On these budgets, tax levies, etc., the state board is to hold hearings and approve or disapprove them. Unless in the opinion of the state board an emergency exists which makes necessary a larger levy, it must disapprove any levy that would produce more than five per cent in excess of the amount produced by levies of the preceding year. A disapproved levy is returned

for revision, although the ruling of the state board as to the existence of an emergency may be set aside by a referendum initiated by petition and receiving three-fifths of the vote cast. The law applies to counties only, unless the county by resolution subjects its subdivisions to the same provisions.

New Jersey has also (Ch. 192) found it necessary to impose a budget system upon municipalities and counties. The same act regulates the borrowing powers of cities. Another important New Jersey act (Ch. 153) relating to municipal finances may be referred to here. It defines floating indebtedness of counties and municipalities and authorizes the funding thereof.

Colorado prohibits (Ch. 114) the levying of more taxes than in the preceding year, plus five per cent, except to provide for the payment of bonds and interest. A Kansas act (Ch. 113) repeals the existing law limiting tax levies in second class cities and fixes new limits to levies in second and third class cities. In Minnesota a new statute (Ch. 106) permits county boards in counties whose assessed valuation does not exceed \$5,000,000 to levy for county purposes any amount in excess of existing limitations that may be necessary, not exceeding a rate of eight mills.

The New Mexico legislature has proposed a constitutional amendment (Joint Resolution 15) limiting the tax levies of all local governments to a rate which will produce no more than five per cent in excess of the amount produced on the same property by the tax levies of the preceding year, except upon the specific authorization of the state tax commission.

Oregon has repealed (Ch. 150) the 1915 law regulating increases in tax levies from year to year, and now provides for elections upon the question of increasing levies over the amounts otherwise limited by the constitution. A section of the constitution approved by the voters in November, 1916, limits local tax levies, unless authorized by referendum, to such a rate as will not produce, except on account of bonded indebtedness, an amount of revenue greater than the total amount raised in the year immediately preceding, not including revenue to meet bonded indebtedness, plus six per cent. Any increase in levies specifically authorized by the voters is to be excluded in determining the amount of taxes which may be levied in any subsequent year.

Arizona has eliminated (Ch. 37) expenditures for interest and redemption funds for bonds from the 10 per cent limit law.

A Washington act (Ch. 143) prohibits any tax district from becoming indebted for any purpose to an amount exceeding 1.5 per cent of the last assessed valuation of the taxable property in the district, without the consent of three-fourths of the voters therein at an election held for the purpose. In cases requiring such assent, the total indebtedness of such district may not at any time exceed five per cent of the last assessable valuation.

TAX EXEMPTION

A Connecticut statute (Ch. 12), in effect April 11, exempts from taxation in the hands of individuals all United States bonds and all Connecticut and municipal securities issued after April 1, 1917. Savings banks, state banks, and insurance companies may deduct the par value of such bonds in making up returns for taxation.

Exemption of improvements has been the subject of legislation in two states. Vermont in an "act to encourage the building of homes" (No. 38) will hereafter exempt from taxation for five years buildings used and occupied exclusively as homes and costing, exclusive of land, not less than \$800 nor more than \$3,000, provided the town in which such buildings are located so votes.

A constitutional amendment proposed in North Dakota (Senate Bill 42) will permit the legislature to exempt from taxation any and all improvements on farm property.

BUDGET REFORM

Although this is a review of tax legislation it is fitting, in the opinion of the writer, to include a summary of state budget reforms. Tax officials, it is true, are primarily interested in the problems of getting revenue into the treasury rather than in its expenditure. But a true budget has its revenue side and, furthermore, as constantly increasing expenditures call for new forms of taxation and improved tax machinery, tax officials should also be especially concerned with the expenditure side of the budget. A proper budget

system is the best corrective for extravagant and wasteful appropriations.

It is quite possible, indeed, that we shall presently see broader duties in relation to state finances laid by law upon tax commissions. Whether this is desirable or not the writer is not prepared to say. As a possible indication of what may be coming, it is interesting to note that the tax commission created this year in Missouri is required, in the language of the statute, “. . . to familiarize itself with all the sources of income provided by law for the state and political subdivisions, and shall have power to investigate and supervise the work of administrative officers affecting finances, to the end that the law affecting sources of public revenue shall not be laxly enforced nor their use impaired”.

Though placing upon tax officials unusual duties in regard to all sources of revenue, the Missouri law goes still further and makes the tax commission responsible not only for making the state budget, but for eliminating waste in expenditure and improving administrative organization. To quote further from this remarkable statute:

“It shall be the duty of the commission to study the work of administrative officers and departments with a view to recommending legislation that will eliminate overlapping service, consolidate where saving in overhead or other expenses can be affected, and abolish where changed economic and social conditions have made governmental functions more or less obsolete or unnecessary.

“The commission shall fully inform itself concerning all expenditure of public funds, by whomsoever and for whatsoever purpose made, and the necessity therefor. The commission shall within the first thirty days of each session of the general assembly report its findings and make such recommendations as it believes will best make for efficiency and economy and prevent waste of public funds.”

State legislatures have this year given more attention than ever before to improvements in budgetary methods. In their annual messages the governors of at least half the 48 states called attention to the matter. Two general types of budget systems prevail. We discuss first the executive budget system, which makes the governor or his representative the chief budget officer, and later those in which the responsibility is entrusted to a board or commission.

The legislature of Delaware by a joint resolution (Ch. 278) requested the governor to submit two complete budgets, one for each of the next two fiscal years, containing a complete plan of proposed expenditures and estimated revenues, accompanied by financial statistics of the preceding biennium and an estimate of the state's present financial condition. These recommendations, taking the form of a budget bill, are to enjoy priority over all other motions except a motion to adjourn. This bill the governor himself may amend or supplement if he desires. No other appropriation bill is to be considered until the budget bill has been disposed of and even then an appropriation bill must be limited to a single purpose and must "provide or designate" the source from which the money appropriated is to be derived. Estimates of the legislature, as well as those for schools, are not subject to the governor's revision.

Stimulated by Governor Lowden, who described the existing method of making appropriations as a "vicious one", the legislature of Illinois provided (H. B. 279) for a biennial budget of estimated revenues and expenditures to be submitted to the governor by the director of finance not later than January 1 next preceding the convening of the regular legislative session, and within the next four weeks the governor must lay the estimates before the legislature with his recommendations. The director of finance, who becomes the chief budget officer, is the head of the department of finance, one of nine principal departments, each responsible to the governor, created by consolidating and centralizing more than 50 scattered and unrelated commissions, bureaus, and minor executive positions. Not later than September 15, the director of finance is required to distribute to all state officers and institutions the blanks for estimates, which must be returned to him not later than November 1. He may then make investigations and disapprove or modify the estimate submitted to him. Nor do the extensive powers of the director of finance end with the preparation of the budget, for under the new administrative code he has authority to prescribe and install systems of accounting and reporting and to supervise accounts and expenditures.

The Kansas legislature followed Governor Capper's recommendation and created a thoroughgoing executive budget system (Ch. 312 and 316). The heads of all departments must, before November 15, submit to the governor their budget estimates on forms approved by the governor and auditor, together with detailed reports for the preceding year and explanations of decreases or increases requested. On November 15 also, or whenever requested by the governor, the auditor and the treasurer must jointly submit to him a summary statement of the financial condition of the state, showing the probable income of the state available for appropriations. In his examination of the estimates the governor has the power to summon witnesses and may himself conduct hearings or appoint some one else to do so. On the second Tuesday of January he submits the budget to the legislature with a special message embodying his recommendations. This message, the law provides, "shall be in such form that it can be easily understood by the average citizen, and shall be printed and a copy thereof presented to each member of the legislature, the press, and each public library". Requests for appropriations not anticipated at the time of the budget message may be transmitted in special messages.

New Mexico also adopted an executive budget system (Ch. 81) similar in most respects to that of Kansas just described. Not later than the 30th of November preceding the biennial session of the legislature the heads of departments and institutions receiving state funds, except the legislature and the judiciary, must submit to the governor estimates of appropriations, in such form and detail as he may require. These estimates the governor examines and on them may hold public hearings. Estimates for the legislature and the courts he must include in the budget without revision, though he may make recommendations in regard to them. On or before the thirtieth day of the session the auditor and auditor-general must submit to the legislature estimates of revenues and estimates of expenditures as revised by the governor, together with appropriation bills. The legislature may not increase any item except for itself and for the judiciary, though it may strike out or reduce items. Until the budget is disposed of, no other appropriation bill may be considered.

In still a third state an executive budget of the usual type was adopted. The Utah legislature provided (Ch. 15) that within twenty days after the convening of the legislature the governor is to submit a budget for the ensuing biennium, containing a complete plan of expenditures and an estimate of revenues, accompanied with his recommendations and financial statistics for the preceding two years. Power is given to the governor to get all the information he desires by holding hearings or otherwise. The only estimates he cannot revise are those of the legislature itself. The governor is also required to deliver to each house a bill embodying his budget. These he may amend or supplement from time to time. In considering the governor's bills the legislature may amend only by striking out or reducing items. Until the budget bill has been finally disposed of, neither house may consider any other appropriation except emergency measures for the immediate expense of the legislature itself. Every additional appropriation must be limited to a single object and becomes void if there is no money in the state treasury for the purpose.

While the main trend seems to be toward the executive budget, budget making by boards and commissions more or less free from the governor's control still finds favor with the lawmakers in some states. The South Dakota legislature created (Ch. 354) a state budget board consisting of five members—the governor elect, the chairmen of the appropriation committees of the house and senate of the previous session, the state auditor, and the chairman of the tax commission. Estimates of appropriations desired are to be filed with the state auditor by October 1 preceding the legislative session. On the fourth Tuesday in November the budget board meets to examine the estimates and prepare a budget. Public hearings must be granted if requested. The budget is transmitted to the legislature not later than the opening day of the session, and with it estimates of revenues for the next two years.

In Tennessee a state budget commission was created (Ch. 139), consisting of the governor, the comptroller, the treasurer, the secretary of state, and the auditor. Not later than the first of December preceding the biennial session of the legislature all departments and institutions must submit their

estimates to the commission, which analyzes them, makes investigations, and submits its recommendations to the governor. Educational appropriations are not included in the budget, since one-third of the gross revenues coming into the treasury is applied to education. Provision is made for public hearings and co-operation between the budget commission and the revenue committees of the legislature. By January 15, that is, two weeks after the opening of the session, the budget must be printed and in the hands of the legislature.

In California, where the most flagrant evils of the pre-budgetary period had already been removed by giving the state board of control jurisdiction over the expenditure of most state departments and institutions, a senate constitutional amendment (No. 15) was passed this year to be submitted to the people in November, 1918, creating a state budget board to ascertain the needs of state offices, departments, and institutions and recommend appropriations. The new board is composed of the three members of the state board of control, the state controller, and the lieutenant governor. Its recommendations must be reported not later than the twentieth day of each regular legislative session, in the form of one general appropriation bill and an omnibus bill "carrying special items for improvements and betterments". Every other bill appropriating money must contain but a single item of appropriation and that for a single purpose expressed therein.

The West Virginia legislature, although urged by Governor Cornwell to establish a budget system, failed to act at the regular session. The second special session, however, passed a constitutional amendment (Ch. 15) providing for a complete budget system, to be submitted to the voters at the general election of 1918. Under the proposed plan the board of public works, consisting of the governor, the secretary of state, the auditor, treasurer, attorney-general, superintendent of free schools, and the commissioner of agriculture, is required to prepare and submit to the legislature, within two weeks of its convening, a budget for each of the two ensuing years, each budget to be a complete plan of proposed expenditures and estimated revenues, accompanied by pertinent financial sta-

tistics. In the preparation of the budget the board of public works may fix the date for filing estimates by departments and prescribe the forms to be used. It may provide public hearings and revise all estimates except those for the legislature, judiciary, and public schools. At any time before final action is taken the board may amend or supplement its budget. The legislature may increase or diminish items relating to itself, but may only increase items touching the judiciary, and only reduce or strike out all other items.

A slight change in the budget machinery of Vermont was made this year by an act (No. 32) providing that the members of the newly created board of control shall be members of the budget committee established by the laws of 1915 (No. 26). This, however, adds to the personnel of the committee only two officials, the director of state institutions and a member of the board of control appointed by the governor.

Governor Sleeper, of Michigan, making economy and efficiency the keynote of his 1917 message, recommended a commission to investigate the advisability of establishing a budget system. Adopting his recommendation, the legislature created (Public Acts, 1917, No. 193) an investigating body to be known as the Michigan Budget Commission of Inquiry, consisting of five members appointed by the governor, with the governor and auditor-general ex-officio members. This commission is "to make forthwith a thorough survey and investigation of the general financial system of this state and the affairs of the several state institutions, boards, departments, commissions, and offices for the purpose of ascertaining the facts relative to the present method of appropriating moneys in the state, to examine the budget laws of other states, their operation and results, and in these and other ways get together information necessary to establish a comprehensive budget system for Michigan." A comprehensive report containing findings and recommendations must be submitted before January 1, 1918.

A unique feature of this investigating commission is that the law makes it also a temporary budget board responsible in a way for making the budget for the next biennial period. The function of preparing the budget for the next legislature

is, however, largely delegated to one of the appointive members, to be designated by the commission itself, who is to be known as "special investigator", and who continues in office, working under the direction of the governor, after the commission makes its report and goes out of existence.

The Massachusetts legislature on May 23 ordered a joint special committee on finance and budget procedure to sit during the recess in order to make a study of budget making, to recommend an improved budgetary procedure for Massachusetts, and to consider the estimates of the various state departments, boards, and commissions. The report of the committee, which must be submitted by January 9, 1918, may include a recommended budget for the fiscal year 1918. In addition to its budgetary studies the committee was ordered "to investigate and report on any and all changes which they may deem necessary for the better, more economical and more efficient administration of the financial affairs of the commonwealth", including specifically the consolidation and abolition of commissions "and the expediency of laws changing the disposition of fees and fines relating to the registration, licensing, and operation of motor vehicles".

Governor Milliken, of Maine, urged the adoption of an executive budget but the legislature merely moved forward (Ch. 240) two weeks the date on which departments must file estimates with the auditor and required the auditor to submit them to the legislature on the first day of the session instead of on January 15.

A North Carolina act relating to appropriations (Ch. 180) may be referred to here although it falls far short of establishing anything like a modern budget system. At least sixty days before the beginning of the legislative session state departments and institutions are required to file reports of expenditures for the past two years and estimates for the next two years, with the legislative reference librarian, who is to tabulate the data, so that a comprehensive study may be made and published in pamphlet form.

STATE AND FEDERAL RELATIONS

A resolution of the California legislature, filed with the

secretary of state on January 27, recited that the federal government by embracing sources of revenue not heretofore used by it is encroaching on the states' sources of revenue; that a line separating the two can equitably and logically be drawn. A congress of the United States and state legislatures is therefore proposed to consider the problem, with the object of adopting and urging upon Congress a definite policy of segregation of the sources of state and federal revenue.

This proposal, originating with the California Tax Commission, has been endorsed by many of the 1917 legislatures in language following closely that of the California resolution. On account of the war no immediate action is to be taken. Such a congress as is proposed might be of no little service in bringing about uniformity and interstate comity in tax legislation. If it attempts, however, to force the federal government to abandon all direct taxation its efforts, in the opinion of the writer, will be wholly futile.

APPENDIX I

CONSTITUTION OF THE NATIONAL TAX ASSOCIATION

As amended at its Seventh Annual Meeting, October 25, 1913, and at its Ninth Annual Meeting, August 13, 1916

ARTICLE I

NAME AND OBJECTS

SECTION 1. The name of this association shall be "National Tax Association."

SEC. 2. Its objects shall be to formulate and announce, through the deliberately expressed opinion of an annual conference, the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.

ARTICLE II

MEMBERSHIP

SECTION 1. Any person in sympathy with the objects of the association shall be eligible to membership. All memberships shall be continuing and the dues therefor shall be paid annually unless the membership is discontinued by reason of death, resignation or non-payment of dues.

SEC. 2. The annual membership dues shall be five dollars, and shall be payable in advance, on the date of the application for membership, and annually thereafter. Any member who shall fail to pay his dues within one year from the date when payable shall be dropped from membership on account of such non-payment.

SEC. 3. All members not in arrears for annual dues shall be entitled to receive, without charge, one copy of the proceedings of the annual conference for the current year, and one copy of such reports, bulletins, pamphlets, and documents as may be issued by the association from time to time for general circulation.

ARTICLE III

ANNUAL CONFERENCE

SECTION 1. An annual national conference on taxation shall be held under the auspices of this association during the month of September

in each year, or at such time and place as its executive committee may determine. The details of each conference shall be arranged by the executive committee in co-operation with such special and standing committees as may be created by this association at its annual meetings for such purpose.

SEC. 2. The administrative personnel of each annual conference shall be composed of three delegates appointed by the governor of each state, and public officials holding legislative or administrative positions charged with the duty of investigating, legislating upon, or administering tax laws.

SEC. 3. The educational personnel of each annual conference shall be composed of persons identified with universities and colleges that maintain a special course in public finance, or at which that subject receives special attention in a general course of economics; members of the profession of certified public accountants; and public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of taxation.

SEC. 4. The voting power in each conference upon any question involving an official expression of the opinion of the conference shall be vested in delegates appointed by governors of states, universities and colleges, or institutions for higher education, and state associations of certified public accountants, each of whom shall have one vote.

SEC. 5. Voting by proxy shall not be allowed.

SEC. 6. No member of this association shall have the right to vote in any annual conference by virtue of such membership.

SEC. 7. The last session of each annual conference, or so much of it as may be necessary, shall be devoted to the consideration of the report of the conference committee on resolutions and conclusions. The report of this committee, as adopted by the conference, shall be its official expression of opinion, and it shall not be held to have endorsed any other expression of opinion by whomsoever made. The voting power of the conference upon an official expression of its opinion is limited with the purpose of safeguarding the conference from the possibility of having its expression of opinion influenced by any class interest; or consideration for those who devote their time to the work or management of this association; or favor for those who contribute money for its support. The annual conference will be the means used by the association for carrying into practical effect its purpose to secure an expression of opinion that will formulate and announce the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.

SEC. 8. Organization of the Conference. The temporary and permanent chairman; secretary and official stenographer; address of welcome and response to the same; meeting place, accommodations for delegates, and all necessary preliminary details for each conference; and also the program of papers and discussions, shall be arranged for the conference

by the executive committee of this association. All other details of the organization and work of the conference shall be arranged by the delegates present in such manner as they may from time to time decide.

ARTICLE IV

ANNUAL AND SPECIAL MEETINGS OF THE ASSOCIATION

SECTION 1. The annual meeting of the association shall be held in connection with the annual conference and at such time as the executive committee may determine. Sixty days' notice shall be given to all members of the time and place at which such annual meeting is to be held.

SEC. 2. Special meetings of this association may be held at any time and place, when called by its executive committee. At least thirty days' notice shall be given to all members of each special meeting, which notice shall specify the purpose for which the meeting is called, and no business shall be transacted at such meeting other than that specified in the call.

SEC. 3. A majority of all members present at any annual or special meeting of this association shall constitute a quorum for the transaction of business, but such quorum shall at no time be less than fifteen, and whenever the attendance of members and delegates exceeds one hundred, twenty-five shall constitute a quorum.

ARTICLE V

OFFICERS AND EXECUTIVE COMMITTEE

SECTION 1. The affairs of this association shall be administered by a president, a vice-president, a secretary, a treasurer, and an executive committee consisting of the president, vice-president, secretary, treasurer, and nine additional members to be elected by the association at its annual meetings and to hold office until their successors are duly elected. In the discretion of the association the same person may serve both as secretary and treasurer. The ex-presidents at their option may become ex-officio members of the executive committee, and two honorary members of the executive committee may be elected annually representing the Dominion of Canada.

SEC. 2. Officers shall be elected for terms of one year and shall be eligible for re-election. Three active members of the executive committee shall be elected each year for terms of three years each, except that at the first election following the adoption of this amendment three such members shall be elected for terms of three years, three for terms of two years and three for terms of one year each. After the election in 1915 no such member of the executive committee shall be re-elected to succeed himself thereon.

SEC. 3. A vacancy in any office or in the membership of the executive committee or of any standing committee may be filled by the executive committee for the unexpired term.

ARTICLE VI

DUTIES OF OFFICERS AND COMMITTEES

SECTION 1. The officers of this association shall perform the customary duties of their respective offices, and such other duties as may be assigned to or required of them from time to time by its executive committee, or by the association.

SEC. 2. When compensation is paid to any officer of this association, the amount thereof shall be fixed by the executive committee, and payment shall be made only as authorized by that committee.

SEC. 3. The Executive Committee shall have power to appoint additional officers, heads of departments, and agents, from time to time, prescribe their duties, fix their term of office, and their compensations, and also to appoint standing or special committees and prescribe their powers and duties. All committees appointed by the executive committee shall report to that committee.

SEC. 4. The Executive Committee and all standing committees created by this association shall perform such general and special duties as may be assigned to them by the association.

SEC. 5. Such Standing and Special Committees may be created from time to time by this association as may be deemed necessary for the efficient promotion of the work being undertaken. All committees appointed by the association shall report to the association.

ARTICLE VII

FINANCIAL MANAGEMENT

SECTION 1. This Association, its executive committee, or any of its officers, agents, or employees, shall have no power to contract a debt, or liability of any kind, for which the association or its members collectively or individually can be held responsible, in excess of the amount of its funds available for the payment of the same.

SEC. 2. The fiscal year of the association shall begin with the first day of the month of July and end with the last day of the month of June in each year.

SEC. 3. The accounts of the Association for each fiscal year shall be closed on the 30th day of June in each year. They shall be audited by a chartered or certified public accountant, who shall certify to the correctness of the financial reports submitted to the association in its annual meeting.

ARTICLE VIII

GENERAL OFFICES AND LIBRARY

SECTION 1. The offices and library of this association shall be established and maintained at such place or places as may be determined by its executive committee.

SEC. 2. This Association shall accumulate and properly index, as rapidly as its funds will permit, a reference and circulating library which shall contain one or more copies of every useful leaflet, pamphlet, address, document, and book on the subject of taxation. As far as is possible with the funds available for the purpose, this library shall be kept continuously written up to date and indexed so as to enable its custodian to supply on application correct and full reference to all authorities on any phase of the subject of taxation, the decisions of courts, the statistical results of taxation laws and of changes made in such laws from time to time.

SEC. 3. The services of this library shall be without charge to all members of this association and to all legislative, executive, and judicial officers of states and of their political subdivisions, and to every person desiring to study, discuss or speak upon any feature of the subject of taxation.

ARTICLE IX

PROCEEDINGS AND PUBLICATION

SECTION 1. At each annual meeting the association shall elect, or authorize its president to appoint, a standing publication committee, under whose supervision a full report of the proceedings of the annual conference last held shall be edited and published. This committee shall also edit and supervise the publication of all reports, pamphlets, and literature in other forms issued by this association.

SEC. 2. The Executive Committee shall authorize the terms of sale or of distribution of all publications issued by this association.

ARTICLE X

BY-LAWS

SECTION 1. The Executive Committee is authorized to formulate, adopt, and from time to time amend, such by-laws as it may deem necessary for the good government of the affairs of this association, and of the official conduct of its officers and committees.

ARTICLE XI

AMENDMENTS

SECTION 1. This Constitution may be amended at any annual or special meeting of this association by a two-thirds vote of all members present; PROVIDED, the full text of the amendment shall have been submitted to the membership by the executive committee or by the member or members proposing the same, at least thirty days before the date of the meeting at which such proposed amendment is acted upon.

APPENDIX II

DELEGATES AND VISITORS AT THE ELEVENTH ANNUAL CONFERENCE

The asterisk indicates delegates.

ALABAMA

P. H. Harris	Birmingham
J. B. Jones	Montgomery
W. R. Loyd	Birmingham
*F. C. Marquis	Montgomery
L. A. Mitchell	Gadsden
*Thos. W. Sims	Montgomery
*B. W. Strassburger	Montgomery

ARIZONA

*Chas. B. Howe	Phoenix
*Budolph Kuchler	Phoenix
*C. M. Zander	Phoenix

ARKANSAS

*Henry Rector	Little Rock
*George Vaughan	Little Rock

CALIFORNIA

*Raymond Benjamin	San Francisco
B. C. Carroll	San Francisco
*Herbert W. Clark	San Francisco
*R. E. Collins	Redding
*Edward A. Dickson	Los Angeles
*Carl C. Plehn	Berkeley
J. Harry Scott	Sacramento
Robert A. Waring	San Francisco

COLORADO

*C. C. Buchanan	La Junta
*John H. Buer	Sterling
*S. E. Hamer	Denver
*C. P. Link	Denver
*E. B. Morgan	Denver
*N. S. Walpole	Pueblo

CONNECTICUT

Ellis B. Baker, Jr.	New Haven
*William H. Corbin	Hartford
*Fred Rogers Fairchild	New Haven
*William T. Hincks	Bridgeport

DELAWARE

*Wm. E. Valliant	Laurel
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DISTRICT OF COLUMBIA

*Allen R. Foote	Washington
Shigo Idzumi	Washington

FLORIDA

*Sidney J. Catts	Tallahassee
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GEORGIA

*M. W. Adams	Atlanta
*L. R. Akine	Brunswick
Ivan E. Allen	Atlanta
J. R. Broadhurst	Dublin
*L. C. Brown	Athens
*E. S. Burgess	Atlanta
*W. M. Clements	Eastman
*Geo. B. Davies	Dublin
*Victor Deen	Alma
*H. R. DeJarnette	Eatonton
*John C. Hart	Atlanta
*Moultrie Hitt	Atlanta
*J. M. B. Hoxsey	Atlanta
*Joel Hunter	Atlanta
W. T. Ivie	Alto
*Edgar H. Johnson	Oxford
*G. Noble Jones	Savannah
*Ernest C. Kontz	Atlanta
Edward Lyle	Atlanta
*Sam. L. Olive	Augusta
*Fredric J. Paxson	Atlanta
*Robt. F. Quillian	Gainesville
W. Arthur Shelton	Athens
J. E. Stark	Atlanta
*C. M. Taylor	Smarrs
*James Drake Weaver	Dawson
*Wm. A. Wright	Atlanta

ILLINOIS

Royal B. Cushing	Chicago
*Geo. S. Faxon	Plano
M. F. Looby	Chicago
*H. A. Millis	Chicago
H. W. Paddock	Chicago
Alfred E. Patten	Chicago
T. A. Polleys	Chicago
*Douglas Sutherland	Chicago
Wm. L. Tarbet	Chicago
*O. H. Wright	Springfield

INDIANA

*Robert Bracken	Frankfort
*Strange N. Cragun	Indianapolis
*Samuel M. Foster	Fort Wayne
*James A. Houck	Indianapolis
*Dan M. Link	Auburn
Carl H. Mote	Indianapolis
*Fred A. Sims	Indianapolis

IOWA

*W. S. Allen	Des Moines
*R. E. Bales	Des Moines
A. H. Davison	Des Moines
*E. H. Hoyt	Des Moines

KANSAS

*Samuel T. Howe	Topeka
*Jasper T. Kincaid	Topeka
*Hays B. White	Mankato

KENTUCKY

*Hite H. Huffaker	Louisville
*Ben Marshall	Frankfort
*J. A. Scott	Frankfort
Edmund F. Trabue	Louisville

LOUISIANA

*Thomas M. Milling	Baton Rouge
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MAINE

*W. B. Catlin	Brunswick
*George Pottle	Lewiston
*Clement F. Robinson	Portland
*C. S. Stetson	Augusta

MARYLAND

Robert J. Eby	Baltimore
Fredrick J. Griffith	Baltimore
*Oscar Leser	Baltimore

MASSACHUSETTS

*Charles A. Andrews	Waban
*Henry H. Bond	Boston
*Charles J. Bullock	Cambridge
*Charles L. Gifford	Barnstable
*John W. Locke	Boston
E. Wentworth Prescott	Boston
Wm. D. T. Trefry	Marblehead

MICHIGAN

*Orlando F. Barnes	Lansing
*Cass R. Benton	Northville
*Thos. D. Kearney	Ann Arbor
Samuel H. Kelley	Lansing

MINNESOTA

*J. G. Armson	St. Paul
*H. J. Burton	Minneapolis
*James T. Hale	St. Paul
*Henry A. S. Ives	St. Paul
*Samuel Lord	St. Paul
*Charles T. Moffett	Minneapolis
Wm. Mueller	St. Paul

MISSISSIPPI

*Frank Roberson	Jackson
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MISSOURI

S. J. Bear	St. Louis
*A. H. Bolte	St. Louis
W. A. Conaway	St. Louis
*J. H. Galeener	Sikeston

MONTANA

*John Edgerton	Helena
*H. L. Hart	Helena
*William Lindsay	Glendive

NEBRASKA

Chas. E. Hall	Omaha
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NEW HAMPSHIRE

*John T. Amey	Lancaster
*Joseph S. Mathews	Concord

APPENDIX II

NEW JERSEY

*Isaac Barker	Phillipsburg
*John L. Carroll	Newark
Jerome T. Congleton	Newark
Benjamin F. Jones	South Orange
W. P. Macksey	Newark
Robert R. Volk	Trenton
*William E. Walter	Trenton

NEW MEXICO

*H. J. Hagerman	Roswell
*A. E. James	Santa Fe

NEW YORK

James A. Blair	New York City
Robert M. Crater	New York City
James M. Gray	Brooklyn
*A. E. Holcomb	New York City
G. Howard Hutchins	New York City
Walter H. Knapp	Albany
Robert B. MacIntyre	Brooklyn
Ralph Norton	Jamaica
Geo. H. Rymers	Plattsburgh
*Martin Saxe	New York City
*Ralph W. Thomas	Albany
*Charles J. Tobin	Albany
*J. F. Zoller	Schenectady

NORTH CAROLINA

*W. Vance Brown	Asheville
J. S. Griffin	Raleigh
A. J. Maxwell	Raleigh
Geo. P. Pell	Raleigh
*E. L. Travis	Raleigh

NORTH DAKOTA

*Frank E. Packard	Bismarck
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OHIO

Robert D. Alexander	Columbus
James G. Hunt	Fremont
Ralph H. Miner	Akron
*George E. Pomeroy	Toledo
W. B. Stratton	Toledo

OKLAHOMA

*E. B. Howard	Oklahoma City
*Leo Meyer	Tulsa
*Frank Orr	Tulsa
*Fred Parkinson	Oklahoma City
*C. T. Flake	Tulsa
*Paul Reiss	Oklahoma City
*Campbell Russell	Oklahoma City.
*Roy L. Starr	Tulsa

OREGON

*Chas. V. Galloway	Salem
*J. H. Gilbert	Eugene

PENNSYLVANIA

S. G. Cramp'	Pittsburgh
*J. T. Holdsworth	Pittsburgh
Carl S. Lamb	Pittsburgh
Springer H. Moore	Philadelphia
Frederick W. Sapper	Harrisburg
*Charles A. Snyder	Harrisburg
H. J. Walker	Pittsburgh

RHODE ISLAND

*Zenas W. Bliss	Providence
*Frank F. Davis	Providence
*Jeremiah P. Mahoney	Newport
*Edmund P. Tobie	Providence

SOUTH CAROLINA

*J. L. Walker	Johnston
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SOUTH DAKOTA

Frank M. Byrne	Faulkton
*H. C. Preston	Pierre

TEXAS

*S. P. Brooks	Waco
*Ben B. Cain	Dallas
*E. T. Miller	Austin
John T. Smith	Austin
Joe C. Thompson	Dallas

UTAH

*Wm. Bailey	Salt Lake City
*Wm. N. Beatty	Salt Lake City
*Francis W. Kirkham	Salt Lake City
A. G. Mackenzie	Salt Lake City
*Thos. P. Page	Riverton

VERMONT

*John M. Avery	Montpelier
*Charles A. Plumley	Northfield

VIRGINIA

*C. B. Garnett	Richmond
*Thos. W. Page	University
Arthur J. Rooney	Richmond

WISCONSIN

*Chester D. Barnes	Kenosha
Edmund H. Bodden	Milwaukee
*Arthur S. Dudley	Milwaukee
*Nils P. Haugen	Madison
*K. K. Kennan	Milwaukee
E. J. Koester	Madison

DOMINION OF CANADA

L. W. Donley	Winnipeg
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